JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES ("KHAMPEPE COMMISSION")

JACOBUS PETRUS PRETORIUS' STATEMENT

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I, the undersigned,

JACOBUS PETRUS PRETORIUS,

do hereby state as follows:

INTRODUCTION AND OVERVIEW

1. I am an adult male and senior counsel. I joined the Department of Justice in November 1976 and remained an employee of the National Prosecuting Authority ("**NPA**") until the end of May 2022, when I retired as a Deputy Director of Public Prosecutions on pension after 46 years of service.

2. During my 46 years as a prosecutor, I served in many ranks within the NPA.

   2.1 I was a clerk of the court from 1976 until approximately 1980.

   2.2 I then worked as a district prosecutor *inter alia* in the traffic court from 1981 until 1983.

   2.3 Thereafter, I worked as a regional prosecutor from November 1983 until 31 December 1986.

   2.4 Subsequently, I was employed as a state advocate from 1 January 1987 until 28 February 1989 and then as a senior advocate thereafter.

   2.5 I was seconded to the Goldstone Commission as an evidence leader with advocate JJ Du Toit from 1991 to 1994.

2.6 I was employed by the NPA as a Deputy Director of Public Prosecutions since 1995.

2.7 I was conferred the status of Senior State Advocate (SC) in 2003.

2.8 I served as a member of the Priority Crimes Litigation Unit ("**PCLU**") since its inception in 2003.

2.9 I served as Special Director at the PCLU for more than three years, from October 2015 to March 2019.

2.10 As stated above, I retired at the end of May 2022.

3. The facts contained in this statement are within my personal knowledge, save where otherwise stated, or where the contrary appears from the context, and are, to the best of my knowledge and belief, both true and correct.

4. Where I rely on facts and/or statements made by third parties, I do so on the belief that such facts and statements are true and correct. Insofar as same is necessary, I refer to the statements and/or confirmatory affidavits of Mr Vusi Pikoli, Mr Chris Macadam and Mr Ackermann SC, which are filed in the Lukhanyo Calata papers, case number: **LBM CALATA and 22 Others v Government of the Republic of South Africa and Others (Case Number:2025-005245, North Gauteng High Court, Pretoria)**. I also refer to my affidavits in the Rodrigues matter in which Mr Rodrigues applied for a permanent stay of prosecution in respect of the murder of Ahmed Timol, and confirm the contents thereof, and request that the contents thereof be taken

as incorporated in the statement. These are attached hereto as annexures "**JPP1**" to "**JPP2**", respectively.

5. This statement is furnished in response to the Rule 3.3 notice issued by the Commission. My responses are directed to the allegations as presently formulated therein, and each section below corresponds to those allegations as presently framed. Should the allegations implicating me be amended, supplemented, or materially altered, I reserve my right to supplement this statement and to respond fully to such amended or additional allegations.

6. Where I make legal submissions, I do so on the advice of my legal representatives, whose advice I believe to be true and correct.

SHORT CURRICULUM VITAE

7. I set out the following short background only insofar as it bears on my experience in complex investigations and prosecutions relevant to the allegations made before this Commission.

8. As stated above, I joined the Department of Justice in November 1976 and remained an employee of the National Prosecuting Authority until the end of May 2022, when I retired on pension after 46 years of service.

9. During my 46 years as a prosecutor, I was involved in cases such as Eugene De Kock (Vlakplaas) and Wouter Basson, as well as a number of other matters, including *S v Trollip*, the high treason case relating to the attack on

the ANC elective conference at Bloemfontein (the Mangaung matter), and the reopened inquest in the Ahmed Timol matter. I handled the *Okah*-appeal in the Supreme Court of Appeal and conducted the first prosecution for Foreign Military Assistance (FMA - Mercenary Activity) in *S v Rouget*. I worked at the Directorate of Special Operations ("**DSO**"/"**Scorpions**") with Advocate Percy Sonn before being transferred to the PCLU under Advocate Ackermann in 2003 when the PCLU was established.

10. I also worked at the South African Law Commission on Project 73: Simplification of Criminal Procedure and lectured at Justice College on International Law. As stated above, from 1991 to 1994, I served as an evidence leader on the Goldstone Commission alongside Mr JJ du Toit. In that capacity, I was involved in inquiries relating to Phola Park, Boipatong, and the Bisho shooting, as well as investigations into so-called "Third Force" activities, which uncovered hit squads within the police and elements of military intelligence. I was in charge of, *inter alia*, the raid on the DCC headquarters of Military Intelligence in Pretoria. All evidence gathered in these matters was transmitted to Dr JD D'Oliveira, then Attorney General of the Transvaal. For continuity purposes, I later assisted in matters arising from those investigations, including the prosecution of Eugene de Kock. I was also part of the Pierre Steyn Inquiry, which led to the dismissal of several generals in the former SADF.

11. I was also part of the team involved in the second investigation into the air crash that resulted in the death of the former President of Mozambique, Mr Samora Machel. I was involved in the investigation into the Smit murders.

These matters were, at the time, regarded as "**Third Force**" type cases and were investigated during the period of the Goldstone Commission, prior to the establishment of the Truth and Reconciliation Commission ("**TRC**"). Between 1991 and 1994, while serving at the Goldstone Commission, I was from time to time allocated to receive and assess information relating to serious allegations, including matters concerning senior defence force officials. I performed my duties at the Goldstone Commission concurrently with my work on related inquiries, including the Pierre Steyn Inquiry.

12. During the period in which I was engaged in these investigations, I received information from various sources concerning a range of matters; however, I did not receive or deal with any information relating to the Timol or Calata matters.

13. I obtained my BA (Law) degree in 1979 from the University of Pretoria. I obtained the LLB degree at the end of 1981 from the same institution and was admitted as an Advocate on 4 May 1982. I obtained a Master of Laws (LLM) degree from University College London on 16 November 1983. In December 1992, I obtained the degree Doctor Legum (LLD) in Procedure and Evidence from the University of Pretoria. In April 2014, I obtained another Master of Laws (LLM) degree in International Law, with distinction. I applied this latter LLM in my work at the PCLU regarding international crimes, which form part of the mandate of the PCLU.

SALIENT FACTS

14. In August 2015, I was entrusted with overseeing the prosecution team investigating and addressing the recommendations made by the Farlam Commission of Inquiry ("**Marikana Commission**"), particularly in relation to cases against members of the South African Police Service in the North West Province. As a result of that investigation, a number of police officers were put on trial.

15. I submitted the memorandum recommending the reopening of the Ahmed Timol inquest, and I led the State team in the reopened inquest before Judge Mothle. In this regard, I enlisted Adv. Shubnum Singh, from the South Gauteng Office as my assistant at the inquest.

16. At the time, as stated above, I was the Acting Special Director of Public Prosecutions of the PCLU. In that capacity, I was required to manage and direct investigations and prosecutions relating to all offences specified in the Prosecution Policy Directives applicable to the PCLU, as well as any other matters referred to the PCLU by the National Director of Public Prosecutions.

FIRST ALLEGATION: FAILURE TO PROSECUTE THE AHMED TIMOL CASE

17. Mr Imtiaz Cajee alleges that there was "*no concerted and intentional will*" on my part to guide the investigation into the death of his uncle, the late Mr Ahmed Timol, and that I should be held accountable for failing to execute my duties. He states:

"In my view had there been a concerted and intentional will on the part of the prosecutor/s to guide the investigator, this evidence could have been presented as early as 2003 when all those involved in my uncle's matter were alive. In essence, both the NPA's PCLU and investigators from the DSO who were seized in investigating the TRC matters, shifted the responsibility to me to furnish further information to take the investigation forward, despite them having the powers and functions to investigate and prosecute. It is my considered view that they must be held accountable for failing to execute their duties. Without having regard to all available evidence, they took a decision to close the file." (para 47)

18. I deny this allegation.

19. I became involved in the Ahmed Timol matter only in January 2016. Prior to my appointment as Acting Special Director in October 2015, I had no managerial responsibility in TRC matters generally, and I was not involved whatsoever with the Ahmed Timol matter. I did not take part in, influence, or participate in any decision to close the file.

20. On the contrary, once the matter came to my attention in January 2016, I acted with requisite commitment and intent to advance the investigation. I guided the investigator, Captain Ben Nel of the Crimes Against the State Unit (CATS), in obtaining Dr Salim Essop's affidavit at the NPA offices. We proactively sought and consulted witnesses. I was personally involved throughout this process.

21. I undertook detailed research into the available material and the applicable law, including the Inquests Act and publicly available historical sources. I prepared a comprehensive memorandum, which I submitted to the National Director of Public Prosecutions for onward submission to the Minister, for the reopening of the inquest. The affidavits of Mr Chris Macadam (deposed in 2018) and Mr Shaun Abrahams, NDPP, confirm this process.

22. I consulted with individuals such as former Security Branch officer Mr Paul Erasmus and experts, including Dr Don Foster, who provided relevant evidence in the reopened proceedings.

23. I also met with the attorneys from Webber Wentzel on several occasions. Together, we developed a coordinated schedule allocating responsibility for witness consultations and preparatory work. Our working relationship was collaborative, and we engaged as partners in progressing the matter. I attach an email addressed to me by Mr Moray Hathorn in which he recognises and expresses his appreciation for our constructive collaboration in the Timol inquest as annexure "**JPP3**".

24. There were multiple meetings with investigators that I attended. I personally consulted witnesses, prepared them, led evidence, and conducted cross-examination in the Timol inquest. I was also directly involved in related TRC matters, including the reopening of the Aggett inquest, and I supervised the Haffajee matter.

25. Between 2003 and 2017, before my involvement in the Timol matter, I was engaged in numerous high-profile and highly complex prosecutions and investigations. These included:

25.1 The appeal in the Dr Wouter Basson matter.

25.2 The Hefer Commission concerning the NDPP, Mr Bulelani Ngcuka, in Bloemfontein.

25.3 The first prosecution under the Foreign Military Assistance Act in *S v Rouget* (Ivory Coast), in which I was successful.

25.4 The investigation and prosecution of the attempted coup d'état in Equatorial Guinea, including the investigation of Sir Mark Thatcher.

25.5 Several matters involving international law under the ICC Act.

25.6 Litigation relating to the Southern Africa Litigation Centre in regard to international crimes, concerning, for instance, the Zimbabwean matter.

25.7 Matters such as S v *Majali*, *S v Scheepers*, and *S v Steenkamp* (right-wing and conventional arms matters).

25.8 A disciplinary prosecution in KwaZulu-Natal involving Mr. Terence Joubert, which proceeded before three different presiding officers.

25.9 A missile-related matter and the Mangaung case involving terrorism and high treason relating to the attack on the ANC leadership.

25.10 The alleged coup d'état in the DRC, *S v Kazongo*, before Judge Mothle.

25.11 Work on the Marikana matters (particularly charges against the SAPS), together with Adv. Shubnum Singh and others.

25.12 The Paul O'Sullivan matter.

25.13 The South African Revenue Services matter ("**SARS**").

25.14 The Robert McBride matter.

26. My workload over this period was extensive and complex, but at no stage did it diminish my commitment to the Timol investigation (in 2016) or other TRC investigations once it came under my responsibility.

27. The allegation that I lacked concerted or intentional will to investigate the matter is therefore unfounded. My actions demonstrate the opposite: active leadership, personal involvement, and decisive steps that culminated in the successful reopening of the Ahmed Timol inquest.

SECOND ALLEGATION: SUBSTANDARD PROSECUTION IN THE BASSON MATTER

28. Mr Imtiaz Cajee alleges that I conducted a "*substandard prosecution*" specifically in respect of the prosecution of Dr Wouter Basson. He states as follows:

> *"Lastly, Hartzenberg accused the state of appearing to be certain as to what the truth was, and by urging the court not to believe anything that contradicted the state's version of the truth. In other*

words, despite compelling evidence available, state prosecutors Ackermann and Pretorius (both alleged political interference in post-TRC prosecutions) presented a substandard case before the courts resulting in Basson's acquittal. (para 221.5)

29. I deny this allegation. The prosecution in the Basson matter was conducted diligently, professionally, and with meticulous attention to detail. At no stage was the prosecution "*substandard*", nor did the State fail to present the extensive body of evidence available.

Scope and Nature of the Basson Case

30. The Basson prosecution was unprecedented in scope and complexity. When Dr Basson was arrested in a sting operation at Magnolia Dell, Pretoria, in 1997, he was apprehended *in flagrante delicto* after handing over ecstasy tablets to an undercover agent, Mr Grant Wentzel, and receiving R60,000 in marked notes. The transaction was recorded. He was caught red-handed.

31. The trial ran for approximately 30 months, with the record amounting to roughly 30 000 pages. It commenced on 4 October 1999 and concluded on 11 April 2002. The State called 153 witnesses. It remains one of the longest and most expensive criminal trials in South African history.

32. Dr Basson's own testimony ran to 4 521 pages, containing what the prosecution regarded as "*inventive spy stories*" and "*imaginative improvisations*". His evidence frequently consisted of new factual allegations

that had not been put to State witnesses during cross-examination or that differed materially from previous versions. This placed substantial and unfair burdens on the prosecution.

33. From 1999 to 2005, the NPA pursued the prosecution of Dr Basson across multiple legal forums and appeal processes. He was charged with murder, attempted murder, conspiracy to commit murder, fraud, and the manufacturing, possession and dealing in drugs. Many of these crimes were connected to the apartheid-era chemical and biological warfare programme.

34. Despite the extensive evidence presented, including documents, logbooks, expert testimony, forensic records, and direct testimony implicating him, the trial court dismissed several charges early in the proceedings and ultimately acquitted Basson of all remaining charges in April 2002.

35. The State applied for leave to appeal to the Supreme Court of Appeal (SCA) in 2003. The SCA (per Harms JA) refused leave to appeal. The prosecutors thereafter sought leave to appeal to the Constitutional Court against both the SCA judgment and the High Court judgment. On 9 September 2005, the Constitutional Court overturned the trial court's dismissal of the conspiracy charges, confirming that some of the charges should not have been dismissed. This process took eight years.

Conclusion

36. The suggestion that the prosecution was "*substandard*" is unfounded. The evidence presented was voluminous, coherent, corroborated, and meticulously prepared. The difficulties the prosecution faced arose from:

    36.1 erroneous dismissals of charges by the presiding judge;

    36.2 a hostile attitude toward the prosecution;

    36.3 multiple factual errors in the judgment; and

    36.4 the legally constrained ability of the State to appeal on questions of fact.

37. Mr Cajee does not, however, explain the successful prosecution of Eugene de Kock, Ferdi Barnard, or the other matters in which we were involved.

38. The prosecution team acted with diligence, professionalism, and integrity. The adverse outcome was not the result of prosecutorial failure but of judicial misdirection and errors which were subsequently confirmed—although too late—by the Constitutional Court.

THIRD ALLEGATION: POLITICAL INTERFERENCE, FAILURE TO FOLLOW LEADS AND BURDEN ON THE FAMILY

39. Mr Imtiaz Cajee alleges that my failure to investigate the death of his uncle, Mr Ahmed Timol, was not due to political interference as I claimed in the *Rodrigues* matter. He states:

> *"PCLU was seized with the TRC matters from 2003 and they oversaw and dealt with these matters. Under their control, and at that stage, in my view, there was no political interference. Neither was there a lack of logistics or capacity raised as a reason for hindrance to the investigation. It was only during the 2019 Full Bench hearings when the NPA made reference to political interference. This after I had raised this in my affidavit (as advised by my legal counsel). Prior to this, they were silent on the matter. It was only Pikoli who made this allegation in his 2015 affidavit in the Simelane matter. (para 44)*

40. He also alleges that I failed to earnestly follow up on leads he furnished. He states:

> *"Macadam made no mention of any further investigation pertaining to the leads that I had submitted, i.e., the transcripts of the TRC hearing, input from detainees, details of the SAP members involved in uncle Ahmed's interrogation and photographs of his body that might have been relevant to an expert or specialist forensic*

pathologist. Nor was there any mention made of any further investigation that Macadam did or could have directed to obtain either support or refute the suicide allegation. In my view, the NPA failed me dismally… I have found no evidence that this was done in my uncle's matter." (para 33)

41. A further allegation is that I unlawfully placed the burden of investigating his uncle's death on him. He states:

"Contrary to the prosecutor guiding the investigator… the impression I got was that they placed an onus on me to investigate the matter… Crimes are not investigated by victims. It is the responsibility of police and prosecution authority to ensure that cases are properly investigated and prosecuted." (para 32, quoting Nkadimeng & Others v NDPP & Others)."

42. I deny these allegations.

43. I was not involved in the Ahmed Timol matter before 2016. I became involved only when the National Director of Public Prosecutions requested that I attend a meeting with Webber Wentzel, Mr George Bizos SC, Advocate Howard Varney, Mr Frank Dutton and Mr Imtiaz Cajee on or about 16 January 2016.

44. From a managerial standpoint, TRC matters only fell under my authority when I was appointed Acting Special Director of the PCLU in October 2015. Before that date, I had no oversight role. At the same time, I was heavily engaged in

the Wouter Basson Matter, Mangaung Matter, and Marikana matters, specifically charges against members of the South African Police Service, together with Advocate Shubnum Singh.

Proactive investigation steps taken from 2016

45. After I became involved, I acted with a concerted, intentional will to advance the matter. I followed up on all leads, identified gaps in the evidence, and ensured that further statements were taken.

46. I instructed the investigating officer, Captain Ben Nel, to obtain the affidavit of Dr Salim Essop. Consultations with this witness were finalised at the NPA offices and proved central to the successful reopening of the inquest.

47. I reviewed the docket and the provided leads, conducted research, and consulted with Mr Chris Macadam and others. I prepared a memorandum to the Minister of Justice through the NDPP recommending that the inquest be reopened, setting out the applicable provisions of the Inquests Act. This recommendation was accepted by both the NDPP and the Minister.

48. I personally consulted witnesses, including Mr Paul Erasmus, MS Madeleine Fullard, Mr Don Foster and Mr Joe Nyampule in Soweto. Given the PCLU's workload, I appointed Advocate Shubnum Singh to assist with this matter.

49. There were several coordination meetings with Webber Wentzel. Together, we drew up a schedule identifying who would take responsibility for each

witness. This was a structured and cooperative partnership, not a situation where responsibility was shifted onto Mr Cajee.

50. In addition, I followed up on all leads relating to TRC transcripts, detainee information, details of SAP members involved in the interrogation, and photographic and forensic material. My experience from the Goldstone Commission and the investigations led by Dr D'Oliveira reinforced that civil society partnership was indispensable in these matters. In the TRC matters, Webber Wentzel worked closely with us until collaboration had to be adjusted due to the legal implications of the *Nkabinde* judgment. Their lawyers were informed accordingly. As regards the essence of the *Nkabinde* judgment in this context, I attach hereto, marked "**JPP4**", my letter to Mr Cajee dated 9 May 2018, and, in particular, refer to paragraph 8 thereof, which addresses the requirement of impartiality and fairness in the investigative process.

No burden was placed on Mr Cajee

51. I did not place any burden on Mr Cajee to investigate the matter. Where he supplied information, it was considered and processed through formal investigative channels. My understanding of prosecutorial duties is consistent with the principle in *Nkadimeng*: victims do not investigate crime. We still have public prosecutors, not private prosecutors.

52. I do not have direct personal evidence of political interference in any matter that I personally handled. Where I refer to political interference in relation to

TRC matters, I do so on the sworn versions of those who did, including Advocates Pikoli, Ackermann, and Macadam.

52.1 I refer to the contents of and align myself with the affidavit of Advocate Vusi Pikoli, deposed to on 6 May 2015 and marked TN7 (pages 170 to 216), attached to Mr Cajee's statement as IAC 12 and IAC 14. A copy of this affidavit was annexed to the founding affidavit of Mr Lukhanyo Calata, marked FA22 in *Nkadimeng 2*.

52.2 I similarly refer to the supporting affidavit of Advocate Anton Ackermann marked TN8 (pages 217 to 235), signed on 7 May 2015 and attached to Mr Cajee's statement as IAC 68. A copy of this affidavit was annexed as FA8 in *Nkadimeng 2*.

52.3 I also refer to the contents of Mr R.C. Macadam's affidavits filed in the *João Rodrigues* stay of prosecution matter (*Rodrigues v NDPP* [2021] 3 All SA 775 (SCA); 2021 (2) SACR 333 (SCA) (21 June 2021). These are attached to Mr Cajee's statement as IAC 11 and related annexures.

My previous affidavits and correspondence

53. I refer again to my letter to Mr Cajee dated 9 May 2018 ("**JPP4**") and reiterate its contents herein. This correspondence demonstrates that I was not unresponsive or evasive in my dealings with Mr Cajee. Matters falling outside my authority were explained to him repeatedly, and I responded to all his queries to the best of my ability.

FOURTH ALLEGATION: REASONS FOR FILLING A SUPPLEMENTARY AFFIDAVIT IN THE RODRIGUES MATTER

54. In paragraphs 354 to 367 of his founding affidavit, Mr Lukhanyo Calata raises questions regarding the timing and reasons for my filing of a supplementary affidavit in the *Rodrigues* matter, which concerned the application for a permanent stay of prosecution.

55. At the time when affidavits were being prepared and filed in the *Rodrigues* matter (approximately November to December 2018), there was a reorganization within the Priority Crimes Litigation Unit. Part of this reorganization involved a policy shift towards decentralising matters. As a result, prosecutions arising from TRC cases were to be handled by the respective provincial DPP Offices, like the South Gauteng office under Advocate Andrew Chauke in this specific instance.

56. Advocate Shubnum Singh, whom I had appointed in the reopened Timol inquest and other matters, ensured continuity and became personally involved in the prosecution team in South Gauteng. During this period, I also experienced health difficulties. I had been diagnosed with cancer and was receiving chemotherapy for some time.

57. For the litigation involving the NPA, the Legal Affairs Division appointed counsel for NPA officials. I worked through Advocate Thobile Chita in this regard and consulted with Advocate Kennedy Tsatsawane.

58. Mr Chris Macadam had deposed to a full affidavit, which he forwarded to counsel on 18 November 2018. However, he became unavailable to consult with counsel thereafter. On 3 December 2018, when we were already late, I received an email from Advocate Thobile Chita from the Legal Affairs Division stating:

> *"Dear Dr. Torie, Kindly be advised that the State Attorney informed me that counsel is not willing to confirm the affidavit that makes reference to the affidavit of Adv McAdam, who he has not consulted. It will create problems for him. As a result, the State Attorney is suggesting that the original draft be filed and a supplementary affidavit of Adv McAdam be filed later after having consulted with counsel."*

59. A copy of this email, together with the trailing correspondence, is attached as "**JPP5**".

60. I was able to respond to the applicant's arguments for a permanent stay of prosecution (presented by Advocate Jaap Cilliers) with the assistance of my counsel because they only relied on Section 342A of the Criminal Procedure Act. However, after Mr. Imtiaz Cajee, in his answering affidavit, made detailed allegations relating to political interference, it became necessary for me to address these issues. I had no personal knowledge of the alleged interference and therefore had to rely on the evidence of those who did, particularly Advocate Macadam and Advocate Pikoli.

61. Because senior counsel was unwilling to file an affidavit referring to Advocate Macadam's evidence without first consulting with him, and because Advocate Macadam was unavailable at the time and we were already pressed for time, the instruction from counsel and the State Attorney was that:

    61.1 my original affidavit should be filed without delay; and

    61.2 Advocate Macadam's confirmatory or supplementary affidavit would be filed once counsel had been able to consult with him.

62. This is the reason why I filed my original affidavit when I did, and why a supplementary affidavit was later necessary. My actions were consistent with the legal advice provided to me by the Legal Affairs Division, the State Attorney, and senior counsel; they were procedurally driven by time constraints and consultation requirements and were not motivated by any improper purpose.

CONCLUSION

63. I deny any allegation of gross dereliction of duty or lack of commitment in the discharge of my responsibilities relating to the Timol investigation. In all TRC-related matters allocated to me, including the Ahmed Timol, Aggett, Rev Chikane and Smith and other matters, I applied myself diligently, professionally and in good faith in pursuit of accountability.

64. I attach hereto, marked "**JPP6**", a letter dated 27 August 2017 from Mr Imtiaz Cajee addressed to the NDPP. In that correspondence, written shortly after the conclusion of the reopened Timol inquest, Mr Cajee stated inter alia:

> *"Please pass my appreciation to the NPA team (Adv. Torie Pretorius, Adv. Shubnum Singh, Investigating Officer Ben Nel) who had been professional and thorough in their conduct during the inquest proceedings."*

65. This contemporaneous acknowledgement is inconsistent with the allegations now advanced.

66. I accordingly respectfully deny the allegations made against me and confirm my willingness to assist the Commission further should it so require.

JACOBUS PETRUS PRETORIUS

JPP1

IN THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA,

PRETORIA

In the matter between: **Case No.: 2018/76755**

JOAO RODRIGUES **APPLICANT**

and

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

OF SOUTH AFRICA **FIRST RESPONDENT**

MINISTER OF JUSTICE **SECOND RESPONDENT**

MINISTER OF POLICE **THIRD RESPONDENT**

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned:

JACOBUS PETRUS PRETORIUS

do hereby make oath and state as set out below:

1. INTRODUCTION

1.1 I am an admitted advocate of this Honourable Court and a member of the personnel of the National Prosecuting Authority (NPA) with offices at the Victoria and Griffiths Mxenge Building, 123 Westlake Avenue, Weavind Park, Silverton, Pretoria. I am the Acting Special

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Director of the Priority Crimes Litigation Unit in the offices of the NPA. I make this affidavit on behalf of the First Respondent in this application to answer some of the submissions of the Applicant.

1.2 The facts contained in this affidavit are within my personal knowledge, unless it appears otherwise from the context and are both true and correct.

1.3 I am competent to depose to the contents of this answering affidavit for purposes of opposing the relief which the applicant seeks.

1.4 I have read the founding papers and wish to inform the Honourable Court that I oppose the application on behalf of the First Respondent.

1.5 I further wish to inform the Honourable Court that I will only deal with the facts and principles relating to matters that I was personally involved in. I will refrain from dealing with allegations against Second and Third Respondents and/or submissions made relating to them as well as matters relating to further particulars and the framing of the charges which was handled by the Director of Public Prosecutions South Gauteng. I will leave it to themselves and their legal teams to deal with allegations against them which do not have a direct bearing on the case against the National Prosecuting Authority and my involvement.

1.6 I am not part of the present prosecuting team but the prosecution is done by South Gauteng Division under the Director of Public Prosecutions, Adv. A Chauke. I therefore do not address the matter of further particulars and/or the framing of charges as I am not personally involved in these matters. These matters will be

addressed in the confirmatory affidavit of Adv R Du Toit, a senior Deputy Director of Public Prosecutions in the Johannesburg Office.

1.7 In my career I have been involved in a number of matters relating to state sponsored violence and covering up of such offences by those involved. Since the Goldstone Commission I have been involved in the investigation and prosecution of matters like the case of EA De Kock (Vlakplaas), - Dr Wouter Basson (chemical biological warfare) and a number of other matters like the Samora Machel plane incident and the Smit murders. These matters constitute extra-ordinary cases. Witnesses are reluctant to come forward, there is a conspiracy to silence and it takes a long time to solve these matters and to obtain the necessary evidence to prosecute any person.

I have considered the contents of the applicant's founding papers and I respond thereto below.

2. THE CONTEXT OF THE APPLICANT'S PROSECUTION

2.1 This application must be considered with due regard to the context of the applicant's prosecution.

2.2 The applicant's prosecution emanates from the criminal offences committed by the apartheid government, in particular members of the then South African Police, against those who opposed it.

2.3 With the advent of the new democratic dispensation in 1994, the Government of National Unity set up the Truth and Reconciliation Commission (TRC) to deal with what happened under Apartheid. The TRC was based on the Promotion of National Unity and

Reconciliation Act, No 34 of 1995. One of the main purposes of this policy was to enable the perpetrators of the aforesaid crimes to come forward, make full disclosure of the nature and extent of the offences committed against the victims and their families and to then seek forgiveness and amnesty from prosecution.

2.4 The mere fact that amnesty from prosecution was required is a clear indication that it was considered that unless same was granted, prosecution would follow where a perpetrator was identified as having committed criminal offences. The applicant did not participate in the aforesaid reconciliation process despite being invited to do so. It would then follow that neither was he granted any amnesty.

2.5 The provisions of the abovementioned Act was intended to address the injustices of the past perpetrated by the apartheid government. It is for this reason that the preamble to the Constitution reminds the people of South Africa that they must not only recognize the injustices of the past, but they must also honour *"those who suffered for justice and freedom in our land"* and respect *"those who have worked to build and develop our country"*.

2.6 In the context of this case, and in order to give meaning and effect to the Constitution, one must ask as to *"who suffered for justice and freedom in our land"* and who must be respected for having *"worked to build and develop our country"*. The answer to this painful question is Mr. Ahmed Essop Timol ("Mr Timol").

2.7 There is no dispute that Mr Timol was arrested for his political activism which formed part of the fight *"for justice and freedom in our land"* and the work *"to build and develop our country"*. The Constitution obliges us to honour his ultimate sacrifice. He is not the only martyr who made this sacrifice.

2.8 The available evidence accepted by the 2017 inquest Court was to the effect that Mr. Timol was subjected to pain and suffering after his arrest. Mr Timol accordingly *"suffered for justice and freedom in our land."*

2.9 The plight and suffering of the family of Mr. Timol ("the Timol family") cannot be ignored. Neither can the continued suffering be tolerated by the repeated denial to the truth of what really transpired in the final hours of Mr Timol's life. Justice demands that the evidence against the Applicant be presented by the State and that the Applicant be given the opportunity to state his case.

2.10 In his application, the applicant seeks an order, the effect of which would be to effectively deny the people of the Republic of South Africa the right to justice, the right to know the truth of what happened to their loved ones, and in particular, deny the Timol family the justice which the Constitution promises and to which they are entitled to.

THE ORIGINAL INQUEST OF 1972

2.11 There could not have been a prosecution in 1971 immediately after Mr. Timol' s death because:

2.11.1 The original inquest did not hear all the evidence relevant to Mr Timol' s death, in particular, the evidence of the only other person who was in company of Mr Timol on the evening of their arrest, namely Dr Saliem Essop. Not only would he have shed light on exactly what had transpired from the moment of their arrest until his subsequent hospitalization in a comatose state a day before Mr Timol died. His evidence would have revealed the stark reality of severe brutality and human rights abuses at the hands of the very police officers who were supposed to have protected them.

2.11.2 No other civilian witnesses who were detained, at least 55 in all, were ever called to testify. Their evidence would have revealed similar fact evidence of severe assaults and interrogation that they were subjected too repeatedly for months whilst held in communicado.

2.11.3 The original inquest was unsatisfactory which reflected just how well orchestrated and well protected members of the security branch were. Mr Timol was not the first person to die in custody. Neither was he the last. Especially so at the notorious John Vorster Square Police Station. Had there really being a

concerted effort made to expose the reality of how Mr Timol died, the court would have acknowledged that there was a startling similarities in the cause of deaths of the number of detainees at John Vorster Square under the very control of the Security Branch police officers.

2.11.4 No evidence of the improbabilities of Mr Timol's physical ability to jump to his death was ever presented. In fact, apart from the parents of Mr Timol, and one or two unrelated witnesses, the State's case comprised only of security branch police officers.

2.11.5 The inquest court with respect ignored material evidence which included the evidence of the mother of Timol who informed the court that she had been told by the members of the security branch that her "child was being given a hiding" because she did not give him a hiding. The conversation to more- or- less that effect was not denied by the Security Branch police. In fact, the police officers went out of their way to convince the court that Timol was treated as a decent human being and had no injuries. This can hardly be accepted especially in view of our troubling past and the human rights violations at the height of Apartheid.

2.11.6 Furthermore, it is not as if there was no dispute about ante and post -mortem injuries on the body of the deceased during the inquest. In fact the only issue was when it had been sustained.

2.11.7 Furthermore, even then there were conflicting versions presented by the Applicant and the witnesses for the State, the police officers themselves, as to exactly how Mr Timol died. That should have immediately raised red flags. The presiding officer concluding, with no evidence, that Mr Timol must have been involved in a brawl prior to his arrest, was without any rational basis.

2.11.8 The original inquest held that no *"living person is responsible for"* Mr Timol's death.

2.11.9 It also concluded that Mr Timol committed suicide;

2.12 On the basis of the above conclusions, the State could not prosecute any person; alternatively, it decided not to prosecute any person, because the only process established to identify a possible accused concluded that there was no *"living person"* to prosecute.

2.13 During the first inquest, the applicant gave evidence to the effect that he was not responsible for Mr. Timol' s death and that Mr. Timol jumped out of window of the famous (or infamous) Room 1026 of the then John Vorster Square Police Station. It concluded that Mr Timol died after he committed suicide on 27 October 1971.

THE RE-OPENED INQUEST OF 2017

2.14 The second inquest was re-opened as a result of the Timol family's tireless efforts to find closure to the painful circumstances under which Mr Timol died.

2.15 The aforesaid efforts led to the Timol family approaching the first respondent *"with information that was not placed before or considered by the Magistrate conducting the inquest in 1972."* [See paragraph 4 of the 2017 inquest Court judgment]. It is this information which led to the re-opening of the second inquest, referred to herein as the 2017 inquest.

2.16 In paragraphs 10 and 12 of the 2017 inquest Court judgment(Annexure X) , the following is stated:

> *"10. This monumental task of re-opening the 1972 inquest was largely simplified by the evidence of witnesses who testified orally in court. The court is indebted to these witnesses as well as those who submitted affidavits. In particular, this court recognizes the courage with which the witnesses, who are former detainees, were able to share with this court and through this court, the public, as to how they had to endure abuse, humiliation and torture at the hands of the Security Branch. Their contribution has been of tremendous assistance to [these] proceedings.*

...

12. *It is through the persistent effort of Mr Imtiaz Cajee that this historic sitting of the re-opened inquest occurred. His efforts should be emulated as an example of how citizens have to assert their rights."*

2.17 In paragraph 15 of its judgment, the 2017 inquest court quoted from Marais NO v Tiley 1990 (2) SA 899 (A) that:

"... The underlying purpose of an inquest is to promote public confidence and satisfaction to reassure the public that all death from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences and so that persons responsible for such death may, as far as possible, be brought to justice ..."

2.18 The criminal trial which the applicant desperately seeks to avoid, permanently, is intended to serve the purpose of an inquest as described in *Marais NO*, i.e. *"to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences and so that persons responsible for such deaths may, as far as possible, be brought to justice ..."*

2.19 The 2017 inquest Court further said the following in its judgment:

"339. *The inquest also revealed that there are many more families which are seeking closure on the unanswered questions concerning the death of their relative in*

detention. They, like all families whose relatives died in detention, need healing. They need closure.

340. It is thus the view of this court that the families whose relatives died in detention, particularly those where the inquest returned a finding of death by suicide, should be assisted, at their initiative, to obtain the records and gather further information with a view to have the initial inquest re-opened ..."

2.20 The reference to *"death of their relative in detention"* referred to in paragraph 339 of the 2017 inquest Court judgment is a reference to the deaths of detainees at the hands of the apartheid government security branch police. These deaths occurred decades ago, and very few perpetrators were prosecuted for those deaths that resulted from criminal action. It is for this reason that the 2017 inquest Court correctly said that the *"many more families"* affected by this death *"should be assisted"*.

2.21 If the relief which the applicant seeks in this application is granted on the grounds relied upon by him, it would necessarily follow that there would be no purpose of assisting the *"many more families"* affected by the *"death of their relative in detention"* if the perpetrators are going to be entitled to a permanent stay of prosecution on the grounds that the applicant relies upon in this present application. In the premise, the outcome of this case will influence the direction

which the first respondent will take in relation to the cases of the *"many more families who are seeking closure on their unanswered questions concerning the death of their relative in detention."*

2.22 In simple terms, if this application succeeds on the grounds relied upon by the applicant, which grounds would potentially be available to other perpetrators in his position, no purpose would be served by the re-opening of other similar inquests and there are *"many more families"* affected by deaths in detention. In this regard, I attach hereto as **JPP 1** a supporting affidavit provided by one of the "*many more families*" contemplated in the 2017 inquest Court judgment.

2.23 When regard is had to the above context, it is not in the interests of justice for the applicant to be granted any of the relief which he seeks. This is more so when regard is had to the fact that the applicant is the last person to see and be with Mr Timol before Mr Timol allegedly got out of Room 1026 through the window.

2.24. The position as it stands is simple. There are two mutually destructive versions which the court will be faced with. On the one hand is the State's case which avers that Mr Timol sustained at least 35 noted injuries, 27 of which were sustained ante-mortem. On the other hand, the Applicant maintains his 47 year old version with some consistency. He maintains that the deceased was fine, healthy and in good spirits. It is only the trial court which can decide whether Mr Timol, with extensive

bruising, a depressed skull fracture, a fractured left jaw, a dislocated left ankle, and extensive bruising on his body amongst other injuries was able to easily outrun and out maneuver the Applicant in a matter of seconds, open the window of the room where he was detained in, and jump out, landing a few meters from the wall of the police station.

3. THE RELIEF IS NOT COMPETENT

3.1 Before responding to each of the allegations contained in the applicant's founding affidavit, it is necessary that I set out the basis on which the first respondent contends that the relief which the applicant seeks in this application is not sustainable in law.

3.2 In his notice of motion, the applicant seeks five orders, all of which are aimed at achieving a permanent stay of his criminal proceedings. What the applicant seeks is an order to the effect that he shall not be prosecuted for any crime in relation to the death of Mr Timol.

3.3 At the centre of the applicant's case for a permanent stay of his criminal trial is an allegation that his right to a fair trial envisaged in section 35(3) of the Constitution and read with section 342A of the Criminal Procedure Act 51 of 1977 ("the CPA") has been violated by the State. I deny that this is so.

3.4 On the facts pleaded by the applicant, there is nothing to justify the conclusion that the applicant has suffered any trial prejudice or that he cannot have a fair trial at all, i.e. that a fair trial would be impossible.

3.5 Section 35(3) of the Constitution provides that:

"35. *Arrested, detained and accused persons*

(1) ...

(2) ...

(3) Every accused person has a right to a fair trial, which includes the right –

(a) to be informed of the charge with sufficient detail to answer it;

(b) to have adequate time and facilities to prepare a defense;

(c) to a public trial before an ordinary court;

(d) to have their trial begin and conclude without unreasonable delay;

(e) to be present when being tried;

(f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;

(g) to have a legal practitioner assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;

(h) to be presumed innocent, to remain silent, and not to testify during the proceedings;

(i) to adduce and challenge evidence;

(j) not to be compelled to give self-incriminating evidence;

(k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;

(l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;

(m)not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;

(n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the

offence was committed and the time of sentencing; and

(o) of appeal to, or review by, a higher court.

..."

3.6 The applicant has not made out a case to establish that any of the above listed rights have been violated – and even if they have been violated, which is denied, that they have been irreparably violated such that there is trial prejudice and that it would be impossible for him to exercise any of the above listed rights so as to enable him to have a fair trial.

3.7 In paragraph 7 of his founding affidavit, the applicant says that the pending criminal prosecution against him will infringe the following of his rights promised in section 35(3) of the Constitution:

3.7.1 the right to have a fair trial that is procedurally fair and is not instituted with an unlawful or improper motive;

3.7.2 the right to have the trial to begin and be concluded without unreasonable delay;

3.7.3 the right to be informed of the charge against him with sufficient detail to answer it;

3.7.4 the right to adduce and challenge evidence effectively;

3.7.5 the right to remain silent and not to incriminate oneself.

3.8 None of the applicant's aforesaid rights have been violated or irreparably violated. I demonstrate this below.

Fair trial without unlawful or improper motive: (also ad par 42 and 37)

3.9 The applicant does not define these two concepts: unlawful of improper motive. An unlawful motive is one which is not authorized by law. An improper motive is a motive which is not related to the purpose for which the power to prosecute is exercised.

3.10 In paragraph 42 of his founding affidavit, the applicant says that his allegation of unfair, improper and unlawful motive is based *"on the charges as formulated in the indictment, more in particular the first count of murder ..."* In this regard, the applicant says that the charge of murder *"is therefore directly in contrast with the findings of the court in the judgment relating to the inquest."* This will be answered by Adv Du Toit in his confirmatory affidavit.

3.11 In paragraph 37 of the founding affidavit the applicant also avers that the First Respondent request for an reopening of the inquest was inherent unfair and unlawful in the light that the relevant facts already concluded that the NPA would prosecute the applicant or were in a position to take such a decision if they properly applied their minds;

3.11.1 I deny that at the time of the request for the re-opening of the inquest that I had already concluded that the National Prosecuting Authority would prosecute the Applicant or anybody else or that we were in such a position to take such a decision if we properly applied our minds. The prosecution team and I were of the opinion that there was no reasonable prospect of success to prosecute any person at that stage. In fact it was only after the inquest was re-opened and two weeks before the re-opened inquest on the 26th of June 2017, after information was received on the whereabouts of the Applicant, that it was ascertained that the Applicant was alive and had been utilizing a different name. On a public holiday just before the inquest was reopened, I personally with the investigating officer, Captain Ben Nel, informed the applicant of his constitutional rights at his house, informed him to obtain legal representation and in fact ensured that I arranged for the legal representative to be present at the inquest when it re-opened. That much is evident from the record. I absolutely deny that we destroyed his right to remain silent. That right was always available to him and is borne out by the record of the inquest where he was repeatedly warned, in the present of both his present counsel of his rights and the implications of him testifying.

THE ALLEGED UNREASONABLE DELAY

3.12 There is no merit in the applicant's suggestion that there has been an unreasonable delay in commencing and concluding his criminal trial.

3.13 Mr Timol passed away on 27 October 1971. The Applicant was arrested and indicted on 30 July 2018. There are two time periods that need to be scrutinized namely a pre-trial phase and a trial phase.

3.14 Section 35(3) (d) promises a right *"to have their trial begin and conclude without unreasonable delay."* Unlike its predecessor in the interim Constitution, section 35(3) (d) does not say that the reasonableness of the time to commence and conclude a trial must be assessed with reference to the *"time after having been charged".*

3.15 Despite the above, the correct position is that a trial can only commence after an accused person has been charged. Accordingly, the unreasonableness of any delay, of which there is none in this case, must be assessed with reference to the time after the applicant was charged with murder. Once this is done, it will become clear that there has not been any delay, let alone an unreasonable delay. Since the verdict of the 1972 inquest court was overturned, it took a mere nine months to enroll the matter for trial. This can hardly be termed a lengthy, unreasonable delay. Further, there were no lengthy opposed bail applications. The Applicant was

warned to hand himself over on the very day he was arrested and charged. He was immediately charged and brought to court on the same day. The indictment was served on the same date. The matter was transferred to the High court and set down for pre-trial issues to be dealt with. And that is when the delay, caused by the Applicant, started.

3.16 The applicant's version about when he was charged and the events thereafter is that:

3.16.1 he *"was arrested on these charges on the 30th July 2018 and brought before the Regional Court in Johannesburg"*;

3.16.2 On the same date of his first appearance, and at an unopposed bail application, the matter was transferred to the High Court. He appeared for the first time in the High Court on 18 September 2018. On 18 September 2018, he informed the court that he wishes to bring an application for a permanent stay of prosecution. The matter was then postponed to 15 October 2018 for a pre-trial conference to take place and for the application.

3.16.3 he requested further particulars from the State on 1 October 2018;

3.16.4 he received the State's reply to his request for further particulars on 5 October 2018;

3.16.5 he delivered an application to compel further and better particulars on 12 October 2018;

3.16.6 He, obviously through his legal representatives, attended a formal pre-trial on 12 October 2018.

3.17 In addition to the above, the applicant attended Court on 15 October 2018. The application for the permanent stay had still not been served on the NPA. The matter was postponed to 22 October 2018. The applicant's legal team then *"undertook to finalize this application and have it issued by 19 October 2018."*

3.18 In the light of what is stated above, there is no delay, let alone an unreasonable delay, in commencing the applicant's criminal trial. On his own version, the applicant was only charged in July 2018 and he launched this application on or about 19 October 2018. This being the case, it cannot be concluded that the period between August 2018 and September 2018 that the trial had not commenced, constitutes an unreasonable delay in commencing the trial to justify a permanent stay of the applicant's prosecution.

3.19 The question of unreasonable delay does not in fact even have to be entertained because during the period complained of, the applicant himself had been meaningfully engaging with the State on the conduct of his trial by, amongst others, requesting further particulars and receiving such particulars and thereafter bringing an application to provide further and better particulars. In the premises, it cannot be

said that the State has negligently forgotten to bring the applicant to trial so as to justify a conclusion that there has been an unreasonable delay.

3.20 In paragraph 49 of his founding affidavit, the applicant raises a new issue which is not based on section 35(3) (d) of the Constitution. Therein, the applicant says that the first respondent *"failed to act in a diligent manner in coming to a decision to institute a prosecution against me."*

3.20.1 Section 35(3) (d) does not apply to the process leading up to the taking of the decision to institute criminal proceedings against an accused. The sub-section is very clear – it talks about the beginning and conclusion of a trial without unreasonable delay. It says absolutely nothing about the decision to prosecute. On a proper reading of section 35(3) (d) an accused person can only complain if a trial does not begin within a reasonable time – that reasonable time can only be assessed with reference to the date on which the accused person was charged. This is so because a criminal trial cannot begin until such time that an accused person has been charged.

3.20.2 Section 35(3) (d) is concerned with the commencement and conclusion of the criminal trial and not with the decision to prosecute.

3.20.3 Even if this is so, the offences with which the applicant has been charged, one of which is Murder read with Section 51(1) of Act 105 of 1997, does not prescribe. In terms of section 18 of the Criminal Procedure Act 51 of 1977, the right to institute a prosecution for any offence....other than the offences of ....(a) Murder....shall unless some other period is expressly provided for by the law, lapse after the expiration of a period of 20 years from the time when the offence was committed.

3.20.4 The State is in law entitled to charge a person with that offence as soon as it is ready to do so – when the State has evidence that the relevant accused person *prima facie* committed the offence.

3.20.5 The State was not ready to charge the applicant at any time before July 2018 when he was charged. The time that had lapsed since the commission of the offence was 47 years.

3.20.6 The applicant does not suggest with reference to admissible evidence that the State had evidence of his guilt and full participation in the killing of Mr Timol all along. All he says is that Mr Cajee, the nephew of Mr Timol had furnished information in respect of his murder to the NPA in as early as 2002.

3.20.7 It is clear that only once the family members met with the NDPP that a decision was taken to present new evidence in a democratic South Africa.

3.20.8 The applicant must now know that new evidence which includes similar fact evidence of fellow detainees and medical and trajectory evidence, amongst other evidence presented, draws one to the conclusion that Mr Timol could not have jumped out of the window of room 1026. In fact, the most likely scenario was that he was in all probability rolled from the roof of John Vorster Square. In paragraph 19.16 of his founding affidavit, the applicant acknowledges the discovery of some new evidence. Therein, he says the following:

"... Basically, the only material of recent origin relates to medical evidence from pathologists, with reference to the injuries and death of the deceased and expert evidence relating to the probable trajectory of the body falling from the tenth floor and/or roof of the building to the ground.

3.21 The applicant deals with the issue of undue delay in paragraphs 44 to 50 of his founding affidavit. There is nothing contained in these paragraphs to suggest that:

3.21.1 the commencement of the trial was unreasonably delayed;

3.21.2 the State charged the applicant and thereafter neglected to commence the prosecution.

3.22 There is no merit in the applicant's suggestion that *"all material witnesses have passed away and I will not be in a position to consult with these witnesses and/or to adduce evidence"* because:

3.22.1 the applicant's version has been somewhat consistent with his version since 1971 in the statement he made to the investigating officer, his evidence at the 1972 inquest, and the evidence he gave at the re-opened inquest in 2017. He has been consistent in saying that there were only two people in the room, he and the deceased. That he was the last person to see the deceased alive. That there was nothing wrong with the appearance or demeanor of the deceased. And that the deceased outran (and outmaneuvered) him and jumped through the window of room 1026. For this reason, he is the only person who saw that fateful event and there are therefore, no other witnesses who were present there will be able to take his case any further.

3.22.2 On his own version, the applicant saw Mr Timol before he died and there is no reason why he himself cannot testify about exactly what transpired during the final minutes of Mr Timol' s life.

3.22.3 Further, that the witnesses who the State intends to call are well and available to testify. That again, this is mere conjecture in an attempt to quash charges.

3.22.4 the applicant's perceived future loss of memory also does not take the matter any further when regard is had to the fact that the applicant's version is already on record and that it remains the same as it was in 1971 and 1972;

3.22.5 the applicant remains free to employ his own medical expert pathologists to study the post mortem reports and provide him with new expert evidence to the extent that he requires the same. In addition, the applicant remains free to challenge any evidence presented by the State. That is his prerogative and right in a democratic South Africa. Further he is in a very fortunate position when he has three counsels and access to experts, none of whom he funds personally.

3.23 It must always be borne in mind that our political dispensation is unlike most other countries. Offences committed in turbulent times, by those charged with protection of its citizens are often brought to justice, albeit decades later. South Africa is no different. It is expected that there might be other factors at play. In paragraph 341 on page 128 of the Re opened inquest the honourable Judge Mothle refer to the improper "*role played by some in the magistracy, prosecuting authorities and medical experts in the past inquest proceedings. Bizos's evidence reveals the role of some of these public officials in being complicit in exonerating members of the Security Branch from the crimes they committed. The 1972 inquest*

into the death of Timol is one such example. From the outset, it had to take a Court order to allow Timol' s family and their lawyers access to case documents, before the inquest commenced. The evidence of the 1972 inquest furthers demonstrate how the prosecution made no effort to obtain evidence other than that of the police and the magistrate attempting to explain away the ante mortem injuries, without any shred of evidence supporting his statement about a brawl." However, the very people who now ask for justice to take its course must be heard. This is a unique case, with a unique set of circumstances which resulted in a historic overturning.

3.24 In the premise, there was no unreasonable delay in commencing the applicant's trial. There is also no irreparable trial prejudice. Once the verdict turned on new evidence, it set in motion criminal proceedings.

3.25 In addition and in any event, section 342A of the CPA requires the trial court itself to investigate any delay in the completion of criminal proceedings which appears to it to be unreasonable and could cause substantial prejudice to both parties. The applicant has not correctly invoked this section. In addition, the applicant has not made out a case that the issues listed in section 342A (2) of the CPA ought to be decided in his favour – he cannot make out such a case without placing the necessary facts before the court.

3.26 In the circumstances, there is no merit in the suggestion that there has been an unreasonable delay and this point ought to be rejected. Section 35 does not lay down a remedy but it could hardly have

been the intention in each and every case where there has been a delay, even if unreasonable, or prejudice, however slight, that a trial should be stayed.

3.27 There is nothing to indicate that the Applicant will be unable to make out a proper defence. There is also nothing indicating that the Applicant will not be fairly tried. Furthermore even if there is prejudice, but the delay does not affect the quality of his defence that the will put up, there should be no room for the extreme decision of staying a prosecution.

3.28 The Applicant had an opportunity to testify at the TRC as is borne out by Mr Piers Pigou. (JPP 2) His conduct towards the investigator speaks volumes.

3.29 In this matter, all the tools available for a prosecution are available. The docket with affidavits, experts, reports and the full transcribed inquest record of 2017 has been furnished to the Applicant. Witnesses are available to testify. The quality of available evidence is not materially flawed as a result of the lengthy lapse of time on the memories of the witnesses the State intends to call. The reasons that the Applicant advances are speculative. He has failed to establish prejudice. It is submitted that even if the State does not call all the witnesses called at the inquest, the charges are still sustainable.

Interests of justice

3.30 The relief which the applicant seeks is not only extra-ordinary, it is very drastic. It is not the norm to stay criminal prosecutions forever.

3.31 When extraordinary and drastic relief is sought, exceptional circumstances must exist to justify such relief because it amounts to a departure from the norm.

3.32 In addition, the test in an application such as the present is whether it is in the interests of justice to grant a permanent stay of the applicant's prosecution. The applicant has not made out a case to establish that it is in the interests of justice to grant the relief which he seeks. Without the applicant himself making out such a case in his founding affidavit, the Court cannot assume that the interests of justice favour the granting of the relief which the applicant seeks.

3.33 The following factors make it <u>not</u> in the interests of justice to grant a permanent stay of the applicant's criminal prosecution:

3.33.1 the context of this case set out above;

3.33.2 the nature of the crimes committed against Mr Timol during the period of Apartheid;

3.33.3 the fact that Mr. Timol' s rights to life and human dignity were so brutally and inhumanely violated in the manner in which he was treated and killed;

3.33.4 the fact that the applicant had an opportunity to appear before the Truth and Reconciliation Commission to apply for amnesty – even if he wanted to argue that he was an accessory after the fact – and that he deliberately refused to be a part of that process by not participating in it. (In this regard, see the affidavit of Piers Ashley Pigou attached hereto as JPP 2 deposed to in London and for which I state that it is in the interests of justice that it be admitted);

3.33.5 the fact that this is not the only case in which people died in police detention at the brutal hands of the apartheid government and that few of such cases have been prosecuted;

3.33.6 the fact that the people of South Africa require that justice be seen to be done in this case by prosecuting the applicant;

3.33.7 the fact that the applicant does not have reasonable prospects of success in the criminal trial because the available evidence shows that Mr Timol could not have willingly jumped or pushed himself out of John Vorster Square building. Only one other person can testify as to what happened in room 1026.

3.33.8 the applicant with respect continues to persist with his unsustainable version that he played no part in the killing of Mr. Timol, forcing the State to run what he also says is going to be a long trial. A lengthy trial will depend on the evidence that the

State will lead and the cross examination of its witnesses by the Defence, which it is entitled to. In any event, there is no right to a shorter trial. It depends on the nature of the proceedings.

3.33.9 The fact that a permanent stay would deny the Timol family the justice which they deserve and for which they have been waiting since 1971. The reality is that both the Timol family and the Applicant deserve closure. It cannot be that the case "hangs in the air". The reality is that we need to move forward. And the way to move forward is to oblige both the Timol family and the Applicant. The Timol family wants the evidence to be presented and tested. The Applicants wants to clear his name and enforces his right to a speedy trial. The only way is to allow the prosecution to honor its mandate. Both interested parties get closure, one way or the other.

3.34 In the premises, the application ought to be dismissed with costs, including the costs consequent upon the employment of two counsels.

I now turn to deal with the contents of the applicant's factual and legal averments contained in the founding affidavit.

4. AD PARAGRAPHS 1 TO 10

4.1 The contents of paragraph 1.1 are not in dispute.

4.2 I deny that the contents of the applicant's founding affidavit are true and correct to the extent that they are inconsistent with the contents of this answering affidavit and the 2017 Inquest Court judgment.

4.3 The contents of paragraph 2 are not in dispute.

4.4 The contents of paragraphs 3 to 5 are not in dispute and do not require a response from the first respondent.

4.5 The contents of paragraph 6 in which the nature or purpose of this application is restated, is not in dispute.

Ad paragraph 7

4.6 Paragraph 7 of the applicant's founding affidavit deals with the basis on which the applicant seeks the relief set out in his notice of motion.

4.7 I have already demonstrated elsewhere above in this answering affidavit that the prosecution which is sought to be permanently stayed will not in any way infringe upon the applicant's constitutional right to a fair trial.

4.8 In the premises and for the reasons stated above, there is no merit in the basis upon which the applicant seeks a permanent stay of his criminal prosecution as alleged in paragraph 7.

Ad paragraph 8

4.9 The applicants' reliance upon section 342A of the CPA is misplaced.

4.10 Section 342A of the CPA does not contemplate an automatic permanent stay of criminal prosecution as a result of an alleged delay in commencing and concluding criminal prosecution. On the contrary, section 342A contemplates that the criminal court dealing with the criminal trial will conduct an inquiry into whether there has been an unreasonable delay "*which could cause substantial prejudice*" not only to the accused person, but also "*to the prosecution ... the State or a witness.*"

4.11 When regard is had to the wide ambit of section 342A, it must necessarily follow that a permanent stay of criminal prosecution in terms of section 342A would only be ordered if, in addition to what is stated therein, it is in the interests of justice to grant such an order.

4.12 In this case, the applicant has not even paid lip service to the question whether it is in the interests of justice to grant a permanent stay of his criminal prosecution.

Ad paragraphs 9 and 10

4.13 The contents of paragraphs 9 and 10 are not in issue.

5. AD PARAGRAPHS 11 TO 18

Ad paragraph 11

5.1 The contents of paragraph 11.1 are not in dispute.

5.2 The contents of paragraph 11.2 are not in dispute.

5.3 The State has already advised the applicant that the reference to section 257 of the CPA in the indictment is incorrect and that the State will not be relying on the provisions of section 257 of the CPA. In this regard, and for purposes of good order and housekeeping, the indictment will be formally amended to reflect the sections of the legislation upon which the State intends to rely. Such an amendment, however, will not affect the main charge of murder levelled against the applicant. Reference ought to have been made to Act 105 of 1997, Criminal Law Amendment Act (or the Minimum Sentence Act.)

Ad paragraph 15

5.4 It is incorrect for the applicant to create an impression that the 2017 Inquest Court was called upon to make a finding on his involvement or otherwise in Mr. Timol's death.

5.5 As stated above, the function of the 2017 Inquest Court was to determine whether Mr. Timol' s death was as a result of an act or omission which *prima facie* involves an offence. As to what criminal offence the applicant or who of any accused persons must be charged with lies exclusively in the NPA's territory. For this reason, the NPA has decided to charge the applicant with murder and with defeating or obstructing the administration of justice.

5.6 As I have stated above, the available evidence leads to one and only one conclusion which is clearly stated at paragraph 22 (page 69 of the Applicant's founding affidavit) of the summary of substantial facts "The State will allege that the accused at all relevant times committed the offence in count one above in the execution of a common purpose. Precisely when, where and how it was formed and who all the parties were, are at present unknown to the State. The State does however allege that the said common purpose was in existence from at least shortly before and for the duration of the commission of the crime."

5.7 Despite having attached the judgment of the 2017 Inquest Court, the applicant has not engaged therewith in his founding affidavit to make out a case that the evidence contained therein does not lead to a conclusion or inference that he is not responsible for the death of Mr. Timol. He is selective in sourcing what is favourable to him as opposed to being honest and forthcoming as to exactly what the findings of the court was.

Ad paragraph 16

5.8 The contents of paragraph 16 are denied.

5.9 The charge of murder levelled against the applicant was not influenced by the fact that the applicant could no longer be charged with being an accessory after the fact. The charge of murder levelled against the applicant was directly influenced by the fact that the

available evidence, carefully analyzed and set out in the 2017 Inquest Court judgment leads to one and only one inference that the applicant was by virtue of the doctrine of common purpose involved in the murder of Mr Timol.

Ad paragraph 17

5.10 The contents of paragraph 17 are denied.

5.11 The applicant's denial that he did not assault or torture or interrogate Mr. Timol is his defense and he is entitled to put that version at his trial. It cannot be debated in this forum in an attempt to quash the charges and prevent the prosecution from presenting its case.

5.12 The applicant's denial that he interrogated Mr. Timol or that he participated in Mr. Timol's interrogation or assault is expected.

5.12.1 The applicant is the only person who was with Mr. Timol at the exact date and time shortly before he died.

5.12.2 The two mutually destructive versions of the Applicant and the State must be weighed up in a trial court. That can only be assessed once the evidence is presented.

5.12.3 The applicant's application is an abuse of process where an attempt is being made to establish the strength or weaknesses of the State's case. The applicant expects the issues which he must raise at his trial to be ventilated in this forum. The deliberate selective interpretation, with the full inquest judgment

attached, is proof that the applicant is abusing the process and the court. Thus contributing to the delay he so vehemently opposes and blames on the State. The Applicant, whilst being in possession of all the affidavits and evidence presented at the inquest court in 2017, together with the content of the police docket expects the evidence and arguments to be explained and interpreted to him.

5.13 The State has already indicated that it intends to rely on circumstantial evidence and similar fact evidence. It will argue that if logic dictates, both versions, that of the Applicant, and that of the State, cannot be reasonably possibly true. Conversely then one must be false. Only the trial court, after assessing all the evidence presented, can decide that. Further that both the functions of the Judiciary and Prosecution are clearly spelt out in their constituting Acts. That the prosecution should be entitled to present its case. The State persists that the applicant is criminally responsible for Mr. Timol's death.

Ad paragraph 18

5.14 The contents of paragraph 18 do not assist the applicant.

5.15 This is the version of the Applicant. These issues cannot be ventilated in this forum. The applicant abuses the process to test the strength of the State's case. It is the applicant himself who placed himself inside Room 1026 from which he alleges Mr. Timol left

through the window. On the applicant's own version, he was the only person who was with Mr. Timol when Mr. Timol left the room through the window. Prior to that Mr Timol, for all intents and purposes, displayed no unusual tell-tale signs that might have led the Applicant to believe that he was unwell or unable to move. When regard is had to the evidence placed before the 2017 Inquest Court about Mr. Timol's physical condition, the only conclusion to be drawn from that evidence is that if both the pathologists found that 27 of the 35 injuries on Mr Timol were inflicted ante-mortem, and only the applicant was in the room then either the pathologists or the Applicant is lying.

5.16 Furthermore, that the applicant must be deterred from misusing this process to canvas issues that he feels will persuade the court in quashing the charges against him. Whether he was a fully- fledged police official performing clerical work is of no consequence. He will be given the opportunity to challenge the evidence presented in court. This is not the forum to request that the evidence be assessed.

5.17 For purposes of its case against the applicant, the State does not have to prove that the applicant participated or did not participate in other operational issues of the Security Branch of the apartheid police. This has already been canvassed and is apparent from the 2017 Inquest Court judgment which is attached to the applicant's own founding affidavit.

6. AD PARAGRAPHS 19 AND 20

Ad paragraph 19.1

6.1 The contents of paragraph 19.1 are not in dispute.

Ad paragraph 19.2

6.2 Mr. Timol was interrogated and tortured.

Ad paragraph 19.3

6.3 Mr. Timol died as a result of having been thrown out of or rolled from the roof of John Vorster Square Building. The available evidence on this issue leads to one and only one irresistible inference: that Mr. Timol was severely assaulted and incapacitated whilst in the care of and in the detention of the security branch police officers. He could not have been in the position to jump to his death. It is for this reason that the State has charged the applicant with Mr. Timol's murder because his version directly contradicts the evidence in the State's possession, amongst other evidence.

Ad paragraph 19.4

6.4 The contents of paragraph 19.4 are not in dispute.

6.5 The 2017 Inquest Court, however, overturned the findings of the 1972 inquest court concluding that "Mr. Timol did not jump out of the

window of Room 1026, but was either pushed out of the window of room 1026 or rolled from the roof of the John Vorster Square building. Thus he did not commit suicide but was murdered" (page 124 of the Judgment).

Ad paragraph 19.5

6.6 The contents of paragraph 19.5 are not in dispute.

The new evidence placed before the 2017 Inquest Court shows that the Timol family was correct in not accepting the findings of the first inquest.

Ad paragraph 19.6

6.7 The contents of paragraph 19.6 are not in dispute.

6.8 Once it was brought to my attention that Mr Saliem Essop, who was in the company of Mr Timol was available to attest to an affidavit, I immediately requested the inquest into the death of Mr Timol be re-opened. A 37 page affidavit from Dr Essop was obtained. This is evident from a Ministerial memorandum dated 25 October 2016. This is attached marked JPP 3. The National Director of Public prosecutions acted immediately and signed the memorandum on the same date. On 3 November 2016, the Deputy Minister of Justice and Constitutional Development, Mr J Jeffery and the Minister of Justice and Correctional Services approved the re-opening of the Inquest. On 17 January 2017, the Judge President, Justice D

Mlambo was requested by the Minister of Justice and Correctional Services to "in the interests of justice ...to re-open the inquest (pertaining to Mr Timol) ". This is attached marked JPP 4. The inquest re-opened on 26 June 2017 and was finalized on 12 October 2017.

Ad paragraph 19.7

6.9 The contents of paragraph 19.7 are not in dispute and are irrelevant to the question whether a permanent stay of the applicant's criminal prosecution should be granted.

Ad paragraph 19.8

6.10 The contents of paragraph 19.8 are in dispute.

6.11 The mother of Mr Timol made an impassioned plea to the police officers involved in the interrogation and the death of her son to come forward and explain what happened to her son. She passed on ten months later with no answers. The contents of paragraph 19.8 clearly indicate that the applicant did not take any steps to assist the Truth and Reconciliation Commission in its investigation. The fact that the applicant simply informed the Truth and Reconciliation Commission's investigator that he was unable to assist "*at that stage, without having had the opportunity to jog my memory from my statement and/or evidence at the initial inquest*

during 1972 to assist him" is clearly contradictory to the content of the affidavit of the investigator appointed by the TRC, Mr Piers Pigou. In any event it does not take the matter any further because the applicant did not thereafter provide the Truth and Reconciliation Commission with any information that could have assisted it in its investigation.

6.12 The applicant's aforesaid attitude confirms what I have stated above that he continues to refuse to take any responsibility in relation to Mr. Timol's death and, when regard is had to the purpose of the Truth and Reconciliation Commission, his conduct justifies the dismissal of this application and the granting of an order that his criminal prosecution should commence forthwith. Had he made full disclosure to the TRC, Gloy and van Niekerk were still alive at that stage. A prosecution could have ensued.

Ad paragraph 19.9

6.13 The contents of paragraph 19.9 are in dispute. The Applicant is not being honest when he advises that the affidavit of Piers Pigou, JPP 2, confirms that he was interviewed. In fact, no interview took place because according to paragraph 7 of his affidavit, Mr Pigou states: "he indicated when we spoke telephonically that he was willing to discuss the case. Several days later I drove to Pretoria as arranged and met with Mr Rodrigues at his place of work". At paragraph 8 of

his affidavit, he states the following: "However, at this meeting he was no longer amicable nor was he willing to co-operate. He came across at reticent and insisted that our entire interaction be recorded with a voice recorder. He was not willing to talk to me about what has happened with Timol and our interaction was concluded rather quickly". At no stage does Mr Pigou say that the applicant requested an opportunity to jog his memory from his statement and/or evidence at the initial inquest during 1972 to assist him. The Applicant is being deliberately untruthful to create the impression that he would have willingly co-operated had this request being complied with. In fact, this is directly at odds with what Mr Pigou submits. Further, this affidavit was handed in at the 2017 inquest. This was never disputed and neither was this point ever raised.

Ad paragraph 19.10

6.14 The contents of paragraph 19.10 are not in dispute.

Ad paragraph 19.11

6.15 The contents of paragraph 19.11 are not in dispute.

Ad paragraph 19.12

6.16 It is correct that the applicant agreed to testify during the 2017 inquest proceedings. He was duly warned by the court of the purpose of the inquest court, of his rights and the ramifications of

any findings it would make at the end of the inquest before he chose to participate.

6.17 The Applicant was given an opportunity to comment on the evidence presented, in particular the medical and trajectory evidence which were in direct contradiction to his version. It would be very strange for the applicant to have any comment to this evidence at the criminal trial in circumstances when he did not have any comment or had offered little objection to it, during the 2017 inquest proceedings.

Ad paragraph 19.13

6.18 The contents of paragraph 19.13 are not in dispute.

Ad paragraph 19.14

6.19 The contents of paragraph 19.14 are not in dispute.

Ad paragraph 19.15

6.20 The contents of paragraph 19.15 are not in dispute.

Ad paragraph 19.16

The content of paragraph 19.16 is disputed. Significantly, I draw the Court's attention to the fact that the applicant accepts that there is indeed "*material of recent origin*" upon which the State will rely in his criminal trial to prove that the only logical inference to be drawn is

that the Applicant was involved in the death of the deceased. The State also placed the Applicant in possession of all the exhibits and transcribed inquest record of 2017. It is incorrect and misleading to say that "basically the only material of recent origin" relates to medical and trajectory evidence. The inquest court also heard evidence from various witnesses and fellow detainees pertaining to torture and assaults at John Vorster Square. The court also heard evidence of collusion, cover ups, and forging of documents which the security branch relied on to justify deaths in detention.

Ad paragraph 19.17

6.21 The contents of paragraph 19.17 are not in dispute.

Ad paragraph 19.18

6.22 The contents of paragraph 19.18 are not in dispute.

Ad paragraph 19.19

6.23 The contents of paragraph 19.19 are in dispute. The averment that the reply to request for further particulars did not comply with the requirements of section 87 of the Criminal Procedure Act must be still is adjudicated before the trial court. An indictment with a detailed summary of substantial facts was served on the applicant. He was also furnished with the content of the docket and the entire transcribed inquest proceedings of 2017, including exhibits. Any

legal practitioner, on thorough perusal of the content of the docket, would have been in a position to plead. This application that the Applicant seeks to rely on in an attempt to get further and better particulars must be seen in the main as a "novel and unmeritorious attempt to get the State to deal with and reply to the Applicant's version of what he submits must be accepted, at this stage, as the true facts giving rise to the counts he faces". What the Applicant has in his possession is sufficient for him to plead and constitutes an abuse of process and a tactic to delay the prosecution from presenting its case.

Ad paragraphs 19.20 and 19.21

6.24 The contents of these paragraphs are not in dispute.

6.25 When regard is had to the contents of paragraphs 19.13, in particular the dates of the events referred to in those paragraphs, there could be no rational basis to contend, let alone find, that there has been an unreasonable delay in commencing with the applicant's criminal prosecution. For this reason, the suggestion that the applicant is entitled to a permanent stay of his criminal prosecution as a result of an alleged unreasonable delay in commencing and concluding his criminal trial is unfounded and ought to be rejected.

Ad paragraph 20

6.26 The contents of paragraph 20 are not in dispute.

7. AD PARAGRAPHS 21 TO 43: ALLEGED UNFAIR AND IMPROPER MOTIVE

Ad paragraph 21

7.1 The contents of paragraph 21 are not in dispute. There is nothing to suggest that the applicant will not have a fair trial.

7.2 As I have stated above, the applicant has not suffered any trial prejudice on the basis of which it could be concluded that he will not have a fair trial.

Ad paragraph 22

7.3 I have already dealt with the provisions of section 35(3) of the Constitution elsewhere above in this answering affidavit.

Ad paragraph 23

7.4 The contents of paragraph 23 are not in dispute.

Ad paragraph 24

7.5 The contents of paragraph 24 are in dispute. This was not the only consideration. As is evident from my draft memorandum, once the affidavit of the only other witness who was in the vehicle with Mr Timol when he was arrested and detained was obtained and other investigations conducted, that the request was made.

Ad paragraph 25

7.6 The exposition of the law in paragraph 25 are correct.

7.7 However when the request for re-opening was made by the NPA, the institution of Criminal Proceedings were not envisaged. In fact the prosecution did not even know the applicant was still alive at that stage. See answer supra.

Ad paragraph 26

7.8 Paragraph 26 should be read with paragraph 37 of the founding affidavit. It is answered in paragraph 3.11.1 on page 18.

Ad paragraph 27

7.9 The contents of paragraph 27 are inconsistent with the contents of the 2017 Inquest Court judgment. The content of this paragraph are denied. The applicant is selective about which comments were made in his favour. He conveniently makes no reference to the fact that the court made adverse credibility findings against him. In fact, multiple contradictory versions emerged during his evidence.

7.10 Despite what I have stated above, there is nothing which prevents the NPA from conducting a thorough assessment of the record to determine whether a person such as the applicant in this case could

be charged with a different offence from that contemplated in the inquest judgment.

Pursuant to the 2017 Inquest Court judgment the NPA assessed the evidence carefully summarized therein and concluded that such evidence leads to one and only one conclusion that the applicant was involved in the murder of Mr Timol.

Ad paragraph 28

7.11 The contents of paragraph 28 are in dispute. The findings of the Presiding Judge should be seen in the full context. The NPA is furthermore not bound by the findings of an inquest court.

Ad paragraph 29

7.12 The contents of paragraph 29 is denied and do not assist the applicant.

7.13 On the applicant's own version, there is material of recent origin which relates to medical evidence from pathologists and expert evidence relating to the trajectory of the body falling from the window of Room 1026.

7.14 The aforesaid evidence is extremely important and the State must be given an opportunity to place it before the criminal trial court for that Court to decide whether, when it is considered with all the other available evidence, it supports the State's contention that the only

conclusion or inference to be drawn therefrom is that the applicant is the person who, was involved in the killing of Mr. Timol.

7.15 In the circumstances, it does not assist the Court for the applicant to say what he says he has "*no hesitation to submit*" to this Court without him placing the correct context of the available evidence before the Court.

Ad paragraph 30

7.16 The contents of paragraph 30 do not take the matter any further and do not constitute a basis to grant a permanent stay of the applicant's criminal prosecution for the death of Mr. Timol. The state merely confirms that all documents and exhibits in its possession have been furnished to the Applicant. The applicant confirmed it received all the documents and exhibits.

Ad paragraph 31

7.17 The contents of paragraph 31 are not in dispute insofar as they correctly reflect the contents of the statutory provisions and the Directive referred to therein.

7.18 I state that there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution of the applicant for the murder of Mr. Timol.

7.19 I have already stated elsewhere above in this answering affidavit what the available evidence shows and what conclusion or inference

could be drawn from that evidence. I state that the available evidence is sufficient to enable a Court to draw the conclusion that the applicant was involved in the killing of the deceased. For this reason, I persist that there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution.

7.20 In the premises, there is a legal basis to commence and continue with the criminal prosecution of the applicant.

Ad paragraph 32

7.21 The contents of paragraph 32 are not in dispute insofar as they correctly reflect the contents of the statutory provision referring to the Prosecution Policy Directives referred to therein.

Ad paragraph 33

7.22 The contents of paragraph 33 are not in dispute insofar as they correctly reflect the contents of the statutory provision referred to therein.

Ad paragraph 34

7.23 The contents of paragraph 34 are not in dispute. The NPA is exercising its functions without fear, favour or prejudice.

Ad paragraph 35

7.24 The contents of paragraph 35 are irrelevant.

7.25 Even if it may be found that the contents of paragraph 35 are relevant, I deny them.

7.26 The correct position is that the Inquest Court is only required to record whether the death of the person who is the subject of the inquest was caused by an act or omission which *prima facie* involves an offence. If it does, as in this case, it is for the National Director of Public Prosecutions or the National Prosecuting Authority to decide whether or not to prosecute. In this case, the national prosecuting authority is exercising its constitutional mandate to prosecute the applicant for murder.

7.27 In the premises, nothing really turns out on contents of paragraph 35. It must be pointed out, that even if the submissions are made by the representative of the NPA, we are not bound by the findings of an inquest court. After the matter was referred to the National Prosecuting Authority, and after a thorough and critical analysis of the evidence, charges are preferred.

Ad paragraph 36

7.28 The contents of paragraph 36 are denied.

7.29 There is no prescription period for the first respondent to charge any person with murder.

7.30 The mere fact that there is no prescription period within which the first respondent is in law allowed to charge anyone with murder

necessarily means that a person such as the applicant could be charged with murder after 49 years from the date on which the murder in issue was committed. This is indeed such a case.

7.31 The findings of the 2017 Inquest Court as far as the exact charge to be levelled against the applicant are not conclusive and it is not binding upon the NPA. The NPA is in law required to consider the findings of the Inquest Court and then decide as to what charge to be preferred against the persons implicated in the death which is the subject of the inquest.

In this case, after having considered the evidence carefully summarized in the 2017 Inquest Court judgment, the NPA has correctly decided to charge the applicant with murder. There is respectfully nothing wrong in law with the decision taken.

I dispute that the Inquest Court found that the applicant was not involved or even present at the time of the murder of the deceased.

Ad paragraph 37

7.32 The contents of paragraph 37 are denied. It has been discussed supra on page 17 and 18 uin paragraph 3.11.

7.33 The NPA respondent only decided to prosecute after the conclusion of the 2017 inquest proceedings.

7.34 In the circumstances, it is also not correct that the applicant no longer had a right to remain silent. The Applicant was ably

represented at the Inquest Proceedings and elected to give evidence. This was a voluntary decision. He also voluntarily provided a warning statement.

7.35 The applicant remains free to attend the criminal trial and thereat remain silent if that is what he wants to do. Section 35(3) of the Constitution is very clear in this regard. It says that every "*accused person*" has a right to a fair trial. An inquest is not a criminal trial. At the 2017 inquest proceedings, the applicant was not an "*accused person*". For this reason, the applicant was not thereat entitled to a right to remain silent as promised in section 35(3) of the Constitution.

7.36 In the event that the applicant wishes to exercise his right to remain silent at the pending criminal trial, the applicant remains entitled to do so.

Ad paragraph 38

7.37 It is correct that the crime of murder does not prescribe.

7.38 The right to a fair trial which the applicant seeks to enforce entitles him to be tried within a reasonable time from the date on which he is charged with an offence. In this case, on his own version, he was only charged in July 2018. The applicant only brought this application in October 2018. There were no previous attempts to subject the applicant to criminal prosecution and it is not suggested that the applicant is now considered by the public to be guilty of the

killing of Mr. Timol such that it could be said that he has suffered trial prejudice to justify a permanent stay of his criminal prosecution. In any event, an accused person once he or she appears as an accused person will run the risk usually associated with being an accused person. But this does not outweigh the mandate of the NPA to prosecute offences of murder.

Ad paragraph 39

7.39 The contents of paragraph 39 are denied.

Ad paragraph 40

7.40 The contents of paragraph 40 are denied.

Ad paragraph 41

7.41 The contents of paragraph 41 are denied.

7.42 On the applicant's own version, the crime of murder does not prescribe.

7.43 The fact that all the police officers who were involved in the interrogation of Mr. Timol have died is irrelevant. This is so because the applicant is not being charged with the interrogation, assault or torture of Mr. Timol. They also could not have assisted his case because he placed himself, alone, in the room with Mr Timol before he died. Furthermore, his version that all was well with Mr Timol, is

supported by his colleagues "from their graves" because their affidavits and evidence was to a large extent "preserved" by the available record.

7.44 The case against the applicant is based on the fact that he is the only person, and the last person who was with Mr. Timol shortly before he died. Insofar as the only person, who was in that room with Mr Timol before he died, it must necessarily follow that the only inference to be drawn is that the Applicant is untruthful as to how and when Mr Timol came to meet his demise.

7.45 The fact that the medical experts who participated in the postmortem examination of Mr. Timol have passed away is irrelevant. Their findings have been preserved in a 77 page judgment. Photographs of the deceased are still available as well as a detailed medico-legal report. The reports remain available and there is nothing which prevents the applicant to employ new experts to consider those reports and file new reports in support of his defence, if he has any.

7.46 The contents of paragraph 41.3 are denied. The applicant refers to "*the memories of all possible witnesses, including myself.*" The applicant relies on his same old version. For this reason alone, the question of impairment on his memory is completely irrelevant and untruthful. The allegation he makes that all possible witnesses have problems with their memory is speculative and conjecture.

7.47 The applicant has not identified any possible witnesses whose memories may have been impaired as a result of the long time that has passed.

7.48 The contents of paragraph 41.4 are irrelevant because the evidence upon which the State would want the criminal trial court to draw the necessary conclusion or inference is already contained in the 2017 inquest judgment and in the docket which has already been provided to the applicant. Accordingly, the contents of paragraph 41.4 do not take the matter any further. In any event, the applicant does not take the Court into his confidence to tell the Court as to what "*crucial records pertaining to the incident*" and "*relevant to the incident*" have been destroyed. The applicant also does not tell the Court as to who destroyed what he says is the many "*crucial records pertaining to the incident.*"

7.49 The medical records upon which the Security Branch relied during the first inquest are still available and it is upon him to decide whether he wants to rely thereupon or whether he wants to engage new medical experts to review those records and provide new expert reports. The difficulty with this, however, is that the applicant did not tell the 2017 Inquest Court that the records, upon which he and his Security Branch relied in 1972, are not a true reflection. He only has himself to blame for this and this does not constitute a basis to grant an order to permanently stay his criminal prosecution.

7.50 The contents of paragraph 41.5 are denied. The applicant has placed no medical records of his "*fragile health*" before the court to substantiate what he says in paragraph 41.5. In any event, as I have already stated above, the applicant has recently confirmed that his version remains as it was during the first inquest. His well-known and somewhat consistent version is that he is the only person who was with Mr. Timol when Mr. Timol left Room 1026 through the window. In his recent, unopposed bail application, marked XX, the applicant also confirmed that his memory was fine and that other than the usual ailments, he had no problems. This flies in the face of allegations of "fragile health" and must be seen as a feeble attempt to evade prosecution. It is also evident from the affidavit of the investigating officer, attached and marked, XX, that the Applicant has a selective use of his crutch. It seems to serve the purpose when it suits the Applicant.

Ad paragraph 42

7.51 I deny that the State has an unfair, improper or unlawful motive for prosecuting the applicant.

7.52 I have already extensively dealt with the alleged unfair, improper or unlawful motive elsewhere above in this answering affidavit.

7.53 The contents of paragraphs 42.1 to 42.12 are not in dispute and correctly reflect what is contained in the 2017 Inquest Court judgment.

7.54 The contents of paragraph 42.13 are not in dispute insofar as they correctly reflect a selection of the contents of the 2017 Inquest Court's judgment. In this regard, it is important to draw the Court's attention to the fact that the applicant's version is that he was present with Mr. Timol when Mr. Timol left Room 1026 through the window thereof. This version makes the applicant the last person to have seen and to be with Mr. Timol inside Room 1026.

7.55 In regard to 42.14 it should be noted that submissions by First Respondent to the Court in the re - opened inquest, not only related to role of the applicant "as accessory after the fact" It is specifically also stated "or as a co-conspirator. " The contents of paragraph 42.14 do not take the matter any further when regard is had to what the 2017 Inquest Court was required to do in terms of the Inquests Act 58 of 1959, i.e. to record whether the death of Mr. Timol was caused by an act or an omission which amounts to an offence. The fact that the 2017 Inquest Court may have gone further to express its views about who may or may not have killed Mr. Timol does not take the matter any further due to the fact that at the end of the day, the first respondent is still in law required to take an independent decision as to which person, if any, should be charged with the murder or any offence in relation to the death of Mr. Timol and as to which offence the person should be charged with.

Ad paragraph 43

7.56 The contents of paragraph 43 do not take the matter any further in the light of what I have already stated above.

7.57 It is important to again emphasize that the first respondent is in law not married to the findings of the Inquest Court as far as the charges to be preferred against an accused person is concerned. The NPA remains free to take an independent decision as to what charges, if any, should be preferred against any person who is responsible for the death of Mr. Timol.

8. AD PARAGRAPHS 44 TO 50: ALLEGED UNDUE DELAY

8.1 The contents of paragraph 44 are not in dispute. The delay contemplated in section 35(3) (d) can only be assessed from the time after the accused person has been charged. In this case, an unreasonable delay has not occurred when regard is had to the fact that the applicant was only charged with murder in July 2018.

8.2 The contents of paragraph 45 are not in dispute. In this case, there is nothing which prevents or makes it impossible for the applicant to exercise his fundamental right to adduce and challenge the State's evidence.

8.2.1 As far as adducing evidence is concerned, the applicant's version remains what it was in 1972 when he gave evidence at the first inquest. For this reason, the applicant has not suffered

and will not suffer any trial prejudice as far as his ability to adduce evidence at his pending criminal trial is concerned.

8.2.2 There is no impediment to the applicant being able to challenge any of the State's evidence intended to be led at his criminal trial. On his own version, the applicant is now fully aware of all the available evidence and it is not suggested that he will not be in a position to challenge any of the evidence which he now knows is available.

8.2.3 Without the applicant, being aware of all the available evidence, telling the Court as to what evidence would be impossible for him to challenge at his criminal trial, the Court cannot simply accept that the applicant's right to adduce and challenge evidence has been infringed or that it would be impossible for the applicant to exercise such a right.

8.3 It is correct that the applicant has only been charged 47 years after Mr. Timol's death. This, however, does not constitute a violation of his right to a fair trial.

Ad paragraph 47

8.4 The contents of paragraph 47 are irrelevant. The applicant again directly contradicts what evidence was already handed in at the re-opened inquest. An attempt was made by a TRC investigator to interview him. The content of that affidavit is self- explanatory.

Ad paragraph 48

8.5 It is not the State's case that the applicant took any steps to evade justice or cause any delay in his criminal trial.

8.6 In any event, the contents of paragraph 48 are completely irrelevant to the question whether there has been an unreasonable delay in commencing and concluding the applicant's criminal trial prosecution.

8.7 The applicant did not have a choice but to hand himself over. A J50 had been authorized for his arrest. A "gentleman's agreement" was put in place which enabled him to hand himself over. Had the State really intended to be malicious and have ulterior motive, they could easily have executed the warrant and kept him in custody. Or opposed bail for that matter.

Ad paragraph 49

8.8 I deny that the first and second respondents failed to act in a diligent manner in coming to the decision to prosecute the applicant.

8.9 In the context of this case, the right to a fair trial has not in any way been violated or irreparably violated by the time that it took the first respondent to take a decision to prosecute the applicant.

8.10 The contents of paragraph 49.1 are not in dispute.

8.11 The contents of paragraph 49.2 are not in dispute.

8.12 The contents of paragraph 49.3 are not in dispute and do not constitute a basis for a conclusion that there has been an unreasonable delay in commencing and concluding the applicant's criminal trial.

8.13 The contents of paragraphs 49.4 and 49.5 are not in dispute.

8.14 In response to paragraph 49.6 it can be stated that even if there is likelihood that cases of this nature were deliberately suppressed by the State, why should the families of victims suffer? The administration of justice will fall into disrepute if perpetrators and alleged perpetrators are allowed to continue with carefree living, after the truth surrounding the mysterious deaths of their loved ones comes to the fore only to be ignored by prosecution and investigation services. In any event, it is the function of the prosecution to prosecute and the function of the police to investigate. It is not for the victims to engage in investigation and prosecution. It will be a sad day in history when where even if it is found that organizations seized with these mandates fail in their functions and our Constitutional democracy whilst acknowledging our painful past, continues to exacerbate the pain of the families by granting permanent stay of prosecutions against alleged perpetrators because of interference, political or otherwise.

8.15 The contents of paragraph 49.7 are not in dispute. However I deny that there was an unreasonable delay. I was not directly involved in the matter until January 2016. I was present when

representations were made to the NDPP and the Head of NPS on Tuesday, 19 January 2016. Adv. George Bizos, Adv. Varney, Frank Dutton and members of Webber and Wentzel also attended this meeting and did a presentation. It related to two matters to wit:

the late Ahmed Timol, and

Dr Niel Aggett.

I immediately started to read and study all the relevant material and gather the material relating to the Timol inquest. I consulted a number of witnesses, the investigating officer and obtained documents and statements. Obviously I also consulted with Adv. Macadam and I confirm his affidavit as far as it relates to me. (Annexure **JPP** 5 attached hereto) When Dr Saliem Essop who resided in the UK, could be seen in South Africa, an interview was held with him. This was done on the 13 October 2016. I ensured that a statement under oath be obtained as soon as possible. This was done on the 14 October 2016. Thereafter I immediately submitted a memorandum to the National Director of Public Prosecutions requesting a reopening of the Inquest in terms of Section 17A. This was done on the 19 October 2016. (See annexure **JPP 3** attached hereto) The NDPP addressed a letter to the Minister on the 25 October 2016. (See Annexure **JPP 6** attached hereto.) I was involved in numerous other matters during that time. From the above it is clear that there was no inordinate delay in this matter once the affidavit from Dr Saliem Essop was obtained. I deny that failed to act in a diligent manner in coming to a decision to reopen an inquest.

8.16 The contents of paragraphs 49.8 are not in dispute.

8.17 The content of paragraph 49.9 is in dispute. Since the overturning of the finding of the 1972 inquest court on 12 October 2017, the applicant became aware of the investigation when he was

approached for a warning statement in June 2018. Eight months is a relatively short period of time in which to conclude investigations, and indict and bring an accused before court.

8.18 The contents of paragraph 50 are denied and do not constitute a basis to conclude that there has been an unreasonable delay in commencing and concluding the applicant's criminal trial such that his right to a fair trial has been irreparably violated for the following reasons:

8.18.1 On the applicant's own version, there were no other people inside Room 1026 when Mr. Timol left that room through the window other than himself and Mr. Timol. For this reason, the suggestion that "*all material witnesses have passed away and I will not be in a position to consult with these witnesses and/or to adduce evidence*" is wrong and misleading.

8.18.2 The question whether Mr. Timol "*was able to move at the time prior to his death and/or whether he was incapacitated as a result of injuries already sustained prior to his fall from the tenth floor*" is irrelevant as far as the applicant is concerned. This is so due to the fact that the applicant's version is that Mr. Timol was able to move and that he moved from one side of Room 1026 to the door thereof and again to the window through which he left that room. That is the applicant's version and one fails to understand as to which witnesses the applicant wants to

consult with and what further evidence the applicant wants to adduce in relation to that version which he has been consistent about. The state has always indicated its state of trial readiness. It is the applicant who delays the matter repeatedly by abusing the process with flimsy applications.

9. AD PARAGRAPHS 51 TO 59: RIGHT TO ADDUCE AND CHALLENGE EVIDENCE

In the light that these facts are within the personal knowledge of the prosecution team, Adv Du Toit will address these averments of 51 – 19 in his confirmatory affidavit.

10. AD PARAGRAPHS 60 TO 67: ALLEGED PREJUDICE

Ad paragraph 60

10.1.1 I deny that the first respondent has infringed the applicant's rights to a fair trial.

10.2 I deny that there has been an "*undue and excessive delay to begin with the prosecution.*" As I have stated above, a prosecution can only begin once an accused person has been charged. What is contemplated in section 35(3) of the Constitution is an unreasonable delay in commencing and concluding a criminal trial with reference to the date after the accused person has been charged with an

offence. The question of unreasonable delay does not arise until such time that the person has been charged with an offence.

10.3 In this case, the applicant was only charged in July 2018 and he brought this application in October 2018.

10.4 The contents of paragraph 60.2 are denied. This is based on speculation.

10.5 I deny that the applicant has suffered any irreparable trial prejudice.

10.6 The contents of paragraph 60.4 are denied. There is nothing to suggest that the new evidence upon which the State seeks to rely which was unearthed during the 2017 inquest was available to the State in 1996 when the matter was investigated by the Truth and Reconciliation Commission or in 2003.

Ad paragraph 61

10.7 The contents of paragraph 61 are denied. It is disrespectful of the Applicant to place himself in the same position as that of the family of Mr Timol.

Ad paragraph 62

10.8 The contents of paragraph 62 are denied. Even if this was the case, once new evidence emerged, the NPA acted on the evidence. It is unacceptable that the status quo must then remain because of a

denied "culpable and reckless inactivity". That would defeat the interests of justice and bring the administration of justice into disrepute.

Ad paragraph 63

10.9 The contents of paragraph 63 are denied for the reasons which I have already stated above.

Ad paragraph 64

10.10 I deny that there is no evidence available to sustain a charge of murder against the applicant. I have already stated above the basis on which the State seeks to contend that the applicant is guilty of Mr. Timol's murder.

10.11 The contents of paragraph 64.2 do not take the matter any further in the light of the fact that the NPA is not bound to charge the applicant with what the Inquest Court thought he should be charged with. The NPA respondent remains free to take an independent decision as to what charges to be preferred against an accused person based on the available evidence. The available evidence clearly shows that the applicant is guilty of Mr. Timol's death.

10.12 The contents of paragraph 64.3 do not take the matter any further. In any event, the applicant's remedy for the complaint in paragraph 64.3 is to bring an application to compel the production of the

requested further particulars or such information as he may in law be entitled to.

Ad paragraph 65

10.13 The contents of paragraph 65 do not constitute a bar from commencing and continuing with the applicant's criminal trial.

10.14 It would not be for the first time that a person of the applicant's age and health is subjected to a criminal trial.

10.15 The fact that the applicant stays in Pretoria and that the trial is scheduled to take place in Johannesburg is irrelevant to the question whether the criminal prosecution should be stayed. Accused persons are always tried at the jurisdiction at which the offence was committed regardless of their place of residence. It is strange that the "dismal" state of health is now being raised as a bar to prosecution. These are neutral factors.

Ad paragraphs 66 and 67

10.16 The contents of paragraphs 66 and 67 are denied.

10.17 In the premises, the applicant has not made out a case for the relief which he seeks and the application ought to be dismissed with costs.

WHEREFORE, I pray that it may please the Court to dismiss the application with costs, including the costs consequent upon the employment of two counsels.

JACOBUS PETRUS PRETORIUS

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 3rd day of December 2018, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.

Colonel.

COMMISSIONER OF OATHS
FULL NAMES:
BUSINESS ADDRESS:
OFFICE:
ALBERTUS MARTHINUS MATHYS FRYLINK
218 Visagie Street: Pretoria.
Crimes Against the State.
Colonel.

CRIMES AGAINST THE STATE
PRIVATE BAG X1500
2018 -12- 03
SILVERTON, 0127
DIRECTORATE FOR
PRIORITY CRIME INVESTIGATION

JPP2

IN THE GAUTENG DIVISION OF THE HIGH COURT OF SOUTH AFRICA, PRETORIA

In the matter between: **Case No.: 2018/76755**

JOAO RODRIGUES	**APPLICANT**
And	
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	**FIRST RESPONDENT**
MINISTER OF JUSTICE	**SECOND RESPONDENT**
MINISTER OF POLICE	**THIRD RESPONDENT**
IMTIAZ AHMED CAJEE	**FOURTH RESPONDENT**

FIRST RESPONDENT'S SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

JACOBUS PETRUS PRETORIUS

do hereby make oath and state as set out below.

1 INTRODUCTION

1.1 I am an adult and I am employed by the National Prosecuting Authority, herein represented by the first respondent. I have already deposed to the first respondent's answering affidavit and remain duly authorized to place the evidence contained herein before the Court on behalf of the first respondent.

1.2 Unless the context indicates otherwise, the contents of this supplementary answering affidavit fall within my knowledge and they are true and correct. In some respects, my knowledge of the contents hereof is derived from the documents to which I also refer herein. I believe that the contents of such documents are true and correct when regard is had to the source of such documents.

1.3 The purpose of this supplementary answering affidavit is to deal with the contents of the fourth respondent's answering affidavit and supplementary affidavit.

1.4 I have considered the fourth respondent's answering affidavit and I reply thereto below to the extent that it is necessary to show that the first respondent is not responsible for the delays in prosecuting the applicant and that the delays complained of do not justify the relief which the applicant seeks.

1.5 I have also considered the contents of the fourth respondent's supplementary affidavit in which is attached an uncertified transcript of what purports to be an interview conducted with a radio station. This supplementary affidavit is irrelevant and serves no purpose in these proceedings and was filed with an intention to paint the National Prosecuting Authority and the South African Police in a negative light. I do not admit the authenticity of the transcript attached to this supplementary affidavit and I am not going to respond thereto.

2 THE DELAYS

2.1 The fourth respondent filed an answering affidavit to oppose the relief which the applicant seeks in this application. This affidavit, however, reads like a supporting affidavit intended to boost the applicant's case and I have no doubt that the applicant will rely on it to support his case.

2.2 In such answering affidavit, the fourth respondent also seeks to tell the Court what caused the delays in instituting the criminal proceedings which are sought to be stayed permanently by the applicant. The only issue which the first respondent takes with the fourth respondent's approach is that he seeks to blame the National Prosecuting Authority and the first respondent for such delays.

2.3 I strongly deny that the first respondent is responsible for the delays upon which the fourth respondent seeks to rely. Even on the evidence upon

which the fourth respondent relies, it is clear that the prosecution was delayed as a result of political interference by others.

2.4 Even if it may be found that the first respondent is responsible for the delays, which I deny, the delays and the first respondent's conduct is not of such a nature that it justifies the permanent stay of the criminal proceedings when regard is had to the following:

2.4.1 the nature of the criminal offence with which the applicant is charged;

2.4.2 the circumstances under which Mr. Timol died;

2.4.3 the fact that the fourth respondent himself says that the National Prosecuting Authority was subjected to severe political pressure not to take urgent steps to prosecute people such as the applicant;

2.4.4 the fact that the interests of justice require the Court to refuse the permanent stay sought by the applicant; and

2.4.5 the fact that the National Prosecuting Authority and its Priority Crimes Litigation Unit which was responsible for the prosecution of TRC matters since 2003 always wanted to have these cases investigated and prosecuted.

2.5 It is not entirely clear from the fourth respondent's answering affidavit as to what he seeks to achieve by blaming the first respondent when on the

other hand, he says that the first respondent was prevented from prosecuting by political office bearers.

2.6 Mr. Timol died in October 1971. An inquest which was conducted thereafter did not result in any criminal prosecution.

2.7 In paragraph 82 of his answering affidavit, the fourth respondent seems to accept that the circumstances around Mr. Timol's murder were covered up by the then government of the Republic of South Africa between 1971 and 1994 and that this cover up "*naturally explains*" the inaction during that period.

2.8 It is surprising that the fourth respondent does not take issue with the people responsible for the cover-up and does not seek any punishment against them. He, however, seeks to lobby for an inquiry to be conducted in relation to certain officials of the first respondent, which officials he accepts were subjected to severe political constraints and interference. It would appear from his answering affidavit that this is indeed his sole motive of seeking to blame the first respondent for the delays in prosecuting the applicant even though at the end he says that the delays in prosecuting the applicant do not justify the granting of the permanent stay relief which the applicant seeks in this application.

2.9 It is common cause that Mr. Timol's murder was politically motivated and it is for this reason a political crime. The fourth respondent also describes it

as such in paragraph 84 of his answering affidavit. It is also common cause that Mr. Timol's murder is not the only political crime for which the perpetrators have not been prosecuted.

2.10 When regard is had to the nature of the crime, it should not be surprising that the government of the day may have taken steps to find a political solution to the political murders which were perpetrated by agents of the pre-1994 government. It is irrelevant as to what one calls such steps. The fourth respondent calls them political interference with the National Prosecuting Authority. He describes the position as follows in paragraph 84 of his answering affidavit:

> *"84 In the post-TRC period the NPA and its officials dealing with my uncle's case, as well as other so-called political crimes from the past, became subjected to severe political constraints. Such pressures served to shape the approach or policy of the NPA and the SAPS in relation to the so-called political cases (also referred to as the "TRC cases"). Indeed, it is my submission that such political pressure made it extremely difficult, if not impossible, for them to carry out their responsibilities under law. This in turn rendered their conduct, in relation to Timol's case and other so-called political cases, questionable, if not unlawful. It also explains the inordinate delay in re-opening the inquest into my uncle's death and, now, prosecuting the accused."* (Own emphasis).

2.11 The first respondent does not deny that the executive branch of the State took what one can describe as political steps to manage the conduct of criminal investigations and possible prosecution of the perpetrators of the political murders such as that of Mr. Timol. When regard is had to what advocates Pikoli, Ackermann and Macadam say in their affidavits confirming political interference with the first respondent's prosecutorial decision-making processes, it is clear that it is in fact not the first respondent who stalled the investigations and prosecution of cases such as the present. For this reason, no purpose would be served by throwing stones at the first respondent.

2.12 When regard is had to what the fourth respondent says in paragraph 84, the only conclusion to arrive at is that the delay in prosecuting the applicant was not as a result of the first respondent's own doing or its malice – it was as a result of the political interference and the "*severe political constraints*" to which the first respondent was subjected.

2.13 The fourth respondent relies on certain incidents which he says constitute evidence of political interference. None of these incidents were created by the first respondent. On the fourth respondent's own version, "*the NPA and its officials dealing with my uncle's case ... became subjected to severe political constraints* ..." There is no doubt that the National Prosecuting Authority and its officials could not have subjected themselves to the "*severe political constraints*" referred to by the fourth respondent.

2.14 It is necessary for me to comment on each of the instances upon which the fourth respondent relies to demonstrate that the first respondent is not the author thereof.

The *secret government report*

2.15 This is a report of the Amnesty Task Team. This task team was appointed by the Director-General's forum on 23 February 2004. The Director-General's forum was not created by the first respondent. It was chaired by the Director-General of the Department of Justice and Constitutional Development. This Director-General must have chaired this forum on the instructions of his superiors. The National Prosecuting Authority was represented thereat by Gerhard Nel and Lungisa Dyosi who were not members of the National Prosecuting Authority's Priority Crimes Litigation Unit responsible for the prosecution of cases such as the present.

2.15.1 The task team was required to consider and report on, amongst others, the following:

> "2. *Consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past.*"

2.15.2 The report clearly indicates that the democratic government, at its highest level, intended to give people such as the applicant, who did

not participate in the TRC process, another opportunity to apply for amnesty. For this reason, the task team considered that it had to "*perform its task within the framework laid down by the President in his statement to the National Houses of Parliament and the Nation on the occasion of the tabling of the report of the Truth and Reconciliation Commission on 15 April 2003.*"

2.15.3 The report further states that the President provided, amongst others, the following guidelines:

> "*(a) There shall be no general amnesty, because it would fly in the face of the TRC process and detract from the principle of accountability which is vital, not only in dealing with the past, but also in the creation of a new ethos within our society.*
>
> *(b) Yet we also have to deal with the reality that many of the participants in the conflicts of the past did not take part in the TRC process.*" (Own emphasis).

2.15.4 Paragraph 3.3 of the report shows that consideration was given to establishing "*a further amnesty process similar to that of the TRC process.*" This, however, was rejected by the task team with the following provision:

"3.3.2 *In the light of the views expressed by the President regarding a further amnesty process, the Task Team decided not to make a recommendation in this regard and to leave this decision in the hands of Government. Should Government, however, decide to proceed with such a further process, a draft indemnity Bill is attached as Annexure "B" for consideration.*"

2.16 It is clear from the report upon which the fourth respondent relies that:

2.16.1 The functions of the aforesaid task team were not determined by the first respondent.

2.16.2 The government, through the President at the time expressed its willingness to establish a second amnesty process similar to that of the TRC clearly in order to give people such as the applicant an opportunity to fully disclose their participation "*during the conflicts of the past.*"

2.16.3 To the extent that the work of the Amnesty Task Team contributed to a delay in the applicant's prosecution, the blame for that does not find a place to sit in front of the first respondent's door steps. In the premises, the report of the Amnesty Task Team upon which the fourth respondent seeks to rely does not in any way establish any wrongdoing on the part of the first respondent.

2.16.4 At best, the government of the Republic of South Africa could be criticized for having entertained the thought of establishing another amnesty process similar to that of the TRC process – but that is as far as that criticism can go. There is absolutely no evidence placed before the Court to suggest that the entertainment of such a thought was malicious and not at all in the interests of justice and the interests of the community as a whole. The time taken entertaining that thought and giving effect to it clearly contributed to the delay in prosecuting the applicant – but that was not the first respondent's doing.

The affidavit of Adv. Vusi Pikoli

2.17 The fourth respondent says that the contents of the affidavit of Adv. Pikoli constitutes evidence of some of the "*various steps aimed at ensuring political control over prosecutorial decisions dealing with the TRC cases.*"

2.18 Pikoli was appointed as the National Director of Public Prosecutions on 1 February 2005. This is the highest position within the National Prosecuting Authority. Prior to that, he was the Director-General of the Department of Justice and Constitutional Development. His affidavit, however, does not say much about the role he played on the Amnesty Task Team. It also does not say anything about the origin of the task team and why it was necessary to set it up.

2.19 In paragraph 85.2 of his answering affidavit, the fourth respondent says that Pikoli's affidavit "*sets out how the independence of his office was seriously compromised*" and "*how he was subjected to withering pressure from political forces, including the then Minister of Justice, Mrs. BS Mabandla, and the then Commissioner of the SAPS, the late Jackie Selebi, to abandon the TRC cases.*"

2.20 I must say upfront that I do not dispute the contents of Pikoli's affidavit upon which the fourth respondent relies. The contents of such affidavit, however, do not constitute a basis to grant the permanent stay which the applicant seeks in this application and further show that the first respondent did not abandon the intention to prosecute people such as the applicant.

2.21. It is important that I highlight some of the contents of Pikoli's affidavit which clearly indicate that the first respondent and its officials were indeed, as alleged by the fourth respondent, subjected to severe political constraints as a result of which, on the fourth respondent's version, it was "*extremely difficult, if not impossible, for them to carry out their responsibilities under law.*"

2.21.1 In paragraph 8 of his affidavit, Pikoli says that:

> "*8. As a result of my decision to authorize the prosecution of a former commissioner of police on corruption charges I was suspended from duty by the then President, Mr. T Mbeki on 23*

September 2007. I also have reason to believe that my decision to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty by the truth and reconciliation commission ... contributed to the decision of President Mbeki to suspend me..." (Own emphasis).

2.21.2 It is clear from the above quoted paragraph 8 of Pikoli's affidavit that he did take a "*decision to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty*" by the Truth and Reconciliation Commission. Pikoli suspects that this decision also influenced President Mbeki to suspend him. Accordingly, not only was there political interference in the work of the highest office of the National Prosecuting Authority, but there was also action taken against the highest office of the National Prosecuting Authority for taking prosecutorial decisions.

2.21.3 In paragraph 14 of his affidavit, Pikoli says the following:

"*14. ... I confirm that there was political interference that effectively barred or delayed the investigation and possible prosecution of the cases recommended for prosecution by the TRC, ...*" (Own emphasis).

2.21.4 Pikoli also deals with what is referred to therein as the TRC cases. He says that decisions to prosecute certain members of the Security

Branch of the South African Police Service were taken by then Acting National Director of Public Prosecutions. After such decisions were taken, it was decided that the matters would be "*held over pending the development of the guidelines to deal with the TRC cases that were to be incorporated into the Prosecution Policy.*"

2.21.5 The contents of paragraph 33 of Pikoli's affidavit reveals what could have been the motivation against prosecuting people such as the applicant at the time. Therein, Pikoli suggests that the prosecution of "*cases like the Chikane matter could open the door to prosecutions of ANC members*" and that such prosecution could then "*give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.*"

2.21.6 In paragraph 52 of his affidavit, Pikoli refers to a memorandum which he wrote to the then Minister of Justice complaining about political interference in the work of the first respondent. Therein, Pikoli says that:

"*52. In this memorandum I concluded that there had been improper interference in relation to the TRC caces and that I had been obstructed from taking them forward. I complained that such interference impinged upon my conscience and my oath of office. I indicated that I was unable to deal with these cases in*

terms of the normal legal processes and sought guidance on the way forward." (Own emphasis).

2.21.7 The contents of the above quoted paragraph, which the fourth respondent accepts as true and correct and reflective of the correct legal position, clearly indicates that the highest office of the National Prosecuting Authority had reached a point where it "*was unable to deal with these cases in terms of the normal legal processes*" and deemed it necessary to seek "*guidance on the way forward.*" According to Pikoli, such guidance was never received. In paragraph 54 of his affidavit, Pikoli concludes that:

"*The failure or refusal of the Minister to respond to my memorandum suggested to me that she preferred for the deadlock between the NPA and the SAPS, NIA and DoJ to remain in place.*"

2.21.8 In paragraph 60 of his affidavit, Pikoli again gives light to the reluctance from the political level to prosecute cases such as the present. Therein, he says that there was a "*fear of opening the door to prosecutions of ANC members, including government officials.*"

2.22 All that is contained in Pikoli's affidavit, upon which the fourth respondent relies to create an impression that the first respondent is responsible for the delays, clearly indicates that the highest office of the National Prosecuting

Authority was subjected to political interference and political pressure not to prosecute cases such as the applicant's case.

2.23 There is nothing in Pikoli's affidavit that could be interpreted to suggest that the first respondent was remiss or negligent in handling what is referred to in Pikoli's affidavit as the TRC cases, which include the applicant's case.

2.24 In the premises, on the fourth respondent's version, the delays in prosecuting the applicant were occasioned by political interference and political pressure and not by the first respondent itself. In the premises, there is no room to blame the first respondent for the delays or to use the delays to justify the permanent stay of prosecution.

The affidavit of Adv. Anton Ackermann

2.25 The affidavit of Adv. Anton Ackermann does not take the matter any further.

2.26 In his affidavit, Ackermann confirms that cases such as the prosecution of the applicant were not prosecuted due to political pressure and political interference as stated in Pikoli's affidavit.

2.27 I do not deny what Ackermann says in his affidavit but I do state that the contents of Ackermann's affidavit do not justify the granting of the permanent stay of prosecution which the applicant seeks in this application.

2.28 The contents of both Pikoli and Ackermann's affidavits give this Court an opportunity to reaffirm the constitutional independence of the National Prosecuting Authority of this country and send a clear message that political office bearers should stop interfering with prosecutorial decisions unless otherwise authorized to do so by law.

2.29 What one sees in Pikoli and Ackermann's affidavits is that the political interference and political pressure brought to bear upon the highest office of the National Prosecuting Authority was far from being authorized by law. This being the case, there can be no rational basis to use such unlawful political interference and political pressure to justify the permanent stay of criminal prosecution which the applicant seeks in this application.

2.30 I agree with what the fourth respondent says in paragraph 88 of his answering affidavit that the manipulation of the criminal justice system to protect individuals from criminal prosecution serves an ulterior and illegal purpose and that it constitutes bad faith, it is irrational, it interferes with the independence of the National Prosecuting Authority and amounts to a gross subversion of the rule of law. This, however, does not justify the granting of the permanent stay of criminal prosecution which the applicant seeks in this application.

2.31 It is important that I again highlight that the fourth respondent does not say that the "*manipulation of the criminal justice system to protect individuals from prosecution*" was perpetrated by the first respondent and its officials.

Insofar as it is not the fourth respondent's version that the manipulation of the criminal justice system was perpetrated by the first respondent and its officials, there can be no basis to use that against the first respondent to justify the granting of the relief which the applicant seeks in this application.

2.32 The relief which the applicant seeks in this application is so drastic that it cannot be granted simply on the basis of the manipulation of the criminal justice system or by what the fourth respondent says amounts to political interference or severe political constraints.

2.33 In the light of the contents of Pikoli and Ackermann's affidavits and the correspondence attached thereto, there can be no merit in the fourth respondent's suggestion in paragraph 97 of his answering affidavit that "*the SAPS and the NPA colluded with political forces to ensure the deliberate suppression of the bulk of apartheid-era cases.*" It is important to draw the Court's attention to the fact that the fourth respondent does not even tell the Court as to when this alleged collusion with political forces occurred. The fourth respondent is called upon to produce evidence of this alleged collusion or to formally withdraw such allegation.

2.34 In any event, the suggestion that the SAPS colluded with the National Prosecuting Authority is completely inconsistent with the contents of Pikoli and Ackermann's affidavits. The two affidavits clearly tell the Court as to why cases such as the applicant's case were not immediately prosecuted

and they do not include the alleged collusion between the SAPS and the National Prosecuting Authority.

2.35 It is not correct that the National Prosecuting Authority has decided to shield "*itself from embarrassment as well as violations of its obligations and duties under the Constitution*" as alleged in paragraph 142.3 of the fourth respondent's answering affidavit. The correct position is simply that the applicant did not in his founding affidavit call upon the first respondent to deal with the issues which the fourth respondent somehow suggests the first respondent ought to have dealt with in answering the applicant's founding affidavit. It is the fourth respondent which has now raised the issues which I have now answered in this supplementary answering affidavit.

2.36 In paragraph 142.1 of his answering affidavit, the fourth respondent contends that "*the period leading up to the decision to institute criminal proceedings cannot be ignored.*" There is no legal basis for this. The fourth respondent contends, in paragraph 142.3, that "*what transpired during this time-period must be explained by the NPA.*" I deny this. The applicant, however, does not rely on this point.

2.36.1 In support of the above contention, the fourth respondent seeks to rely on paragraph 3(C) of the Prosecution Policy.

2.36.2 Paragraph 3 of the Prosecution Policy deals with the role of a prosecutor. Paragraph 3(C) deals with prosecution in the public interest and seeks to provide guidance to prosecutorial decision-making process in relation to prosecution of cases in the public interest.

2.36.3 In relevant parts, paragraph 3(C) of the Prosecution Policy upon which the fourth respondent relies for his contention that the first respondent must provide an explanation for the time period leading up to the institution of criminal charges against the applicant provides that when a prosecutor considers whether or not it will be in the public interest to prosecute, the prosecutor must consider all relevant factors including, amongst others, whether there has been an unreasonably long delay between the date when the crime was committed, the date on which the prosecution was instituted and the trial date, taking into account the complexity of the offence and the role of the accused person in the delay.

2.36.4 It is important that I draw to the Court's attention the fact that the very same paragraph states that:

"*The relevance of these factors and the weight to be attached to them will depend upon the particular circumstances of each case.*"

2.36.5 At all material times relevant to this case, the first respondent has always been aware of the long period of time which has passed between the date when the crime was committed and the date on which criminal proceedings were instituted against the applicant. For this reason, it cannot be suggested that the first respondent did not take into account the delay between the date on which the crime was committed and the date on which criminal proceedings were instituted against the applicant.

2.36.6 When regard is had to the nature and seriousness of the offence; the manner in which Mr. Timol was killed; the pain which Mr. Timol must have suffered; and the fact that the applicant has not admitted guilt and has not shown repentance the delay between the date on which the crime was committed and the date on which the prosecution was instituted justify the dismissal of this application. All of these factors, together with the fact that the delay in prosecuting the applicant was not deliberately caused by the first respondent, it is not in the interests of justice to grant the permanent stay relief which the applicant seeks in this application.

2.37 I deny the fourth respondent's insinuation in paragraph 142.6 that Chris Macadam did not act properly when the investigation of this matter was entrusted to him. In this regard, I attach hereto as **SA1,** Chris Macadam's affidavit in which he sets out in detail, and supported by documentary

evidence, his role during the relevant periods in the investigation of this matter.

2.38 When regard is had to the contents of Chris Macadam's affidavit, it is clear that he did all he could under the political environment which prevailed at the time which, as the fourth respondent himself has indicated in his answering affidavit, was clearly not in favour of prosecuting cases such as the present. For this reason, the insinuation against Chris Macadam is wholly misplaced. [Chris Macadam's affidavit attached hereto as SA1 is the very same affidavit referred to in my main answering affidavit but was not attached thereto].

2.39 In the light of the interest which the fourth respondent has shown in Macadam, it is necessary that I draw the court's attention, and indeed the fourth respondent's attention to some of the contents of Macadam's affidavit and the annexures thereto.

2.40 Macadam is a senior advocate of this court and has, since 2003 served as the Senior Deputy Director of Public Prosecutions in the National Prosecuting Authorities Priority Crimes Litigation Unit. This unit has always been located within the office of the National Director of Public Prosecutions.

2.41 In paragraph 12 of his affidavit, Macadam says that the then National Director of Public Prosecutions took a decision, shortly after the

establishment of the Priority Crimes Litigation Unit, that such unit "*should take over the TRC cases which had not been finalized either by the DPP or by the defunct TRC unit.*" This is a clear indication that right from the beginning, the National Prosecuting Authority intended to investigate and prosecute cases such as the present.

2.42 In paragraphs 15 and 17, Macadam indicates that Mr Timol's case was identified as one which required further investigation and this is confirmed in annexure RCM2 to his affidavit.

2.43 In an internal memorandum dated 15 July 2003 Advocate Ledwaba of the then Directorate of Special Operations (then known as The Scorpions) which was mandated to investigate cases such as the present advised Macadam and others, amongst others, as follows:

"*(i) TRC Cases*

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used."

2.44 Pursuant to Ledwaba's aforesaid decision, Macadam and Ackermann did the right thing by commencing engagement with the SAPS after which

Commissioner J F De Beer of the SAPS addressed a letter dated 26 September 2003 to Ackerman in, amongst others, the following terms:

"As agreed at our meeting, I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. Our understanding was that this referral was politically inspired. As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations (DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking ...

In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seemed to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

If the President indicates that the South African Police Service should be involved in the investigations, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist, and the terms of reference, as well as issues such as logistics, number of investigators, command, can be discussed, as well as other relevant issues." (Own emphasis).

2.45 The above-quoted letter clearly signaled the beginning of difficulties in investigating and prosecuting cases such as the present. In order to avoid delays and being entangled in bureaucracy, Macadam and Ackermann attempted to persuade Ledwaba to reconsider his decision not to investigate cases such as the present. Their frustrations are well documented in annexure RCM5 attached Macadam's affidavit – being an internal memorandum dated 11 November 2003. Therein, they set out their frustrations and concluded as follows:

"2. *As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted. There are certain cases which could have been prosecuted which have prescribed. There is both national and international pressure to institute prosecutions (eg. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability*

of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the bona fides of the National Prosecuting Authority into serious [disrepute] and do irreparable damage.

Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of section 28(1)(b). This chapter in our country's history must be closed without further delay."

2.46 Despite Ackermann and Macadam's pleas, the then Directorate for Special Operations did not appoint investigators as requested and cases such as the present were not further investigated. To make matters worse, in 2004, Macadam was assigned a case which required his full-time attention until late 2007 and was then not involved in the investigation and possible prosecution of TRC cases.

2.47 No serious investigation of cases such as the present took place and the reasons for this are clearly apparent from Macadam's affidavit. In paragraph 40 of his affidavit, Macadam says that he requested the Directorate for Priority Crimes Investigations to re-open the investigation of Mr Timol's case.

2.48 After having done all of the above, Macadam was informed by Advocate Johnson, the then head of the Priority Crimes Litigation Unit *"that we should not continue to work with TRC cases as they were going to be removed from the PCLU."* (Own emphasis).

2.49 Attached to Macadam's affidavit as RCM16 is a letter dated 8 February 2007 from then Minister of Justice Ms Mabandla to then National Director of Public Prosecutions, Pikoli. In this letter, the then Minister expressed her concern that she read media articles suggesting that the National Prosecuting Authority was going ahead with prosecutions of cases such as the present. The then Minister said, amongst others, the following:

"I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise. In our discussions, you briefly mentioned to me that the NPA will not be going ahead with the prosecutions. As you had undertaken to advise me in writing, I will appreciate it if you could advise me urgently on the matter so that there can be certainty."

2.50 The contents of the then Minister's letter clearly indicates that government at the highest level was of the view that the first respondent knew that cases such as the present were not going to be investigated and prosecuted. In addition, the letter also suggests that Pikoli had advised the Minister that *"the NPA will not be going ahead with the prosecutions."*

2.51 In a memorandum dated 15 February 2007 from Pikoli to then Minister of Justice, Pikoli, amongst others, expressed his frustrations arising from political interference with the National Prosecuting Authority's prosecutorial decision-making processes. The upshot of Pikoli's frustrations is set out in paragraph 5.2 of this memorandum, wherein he said:

"5.2 I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and/or obstructed from carrying out my functions on this particular matter. Legally I have reached a dead end. (Own emphasis).

5.3 It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took, does not allow that.

5.4 Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA, as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter." (Own emphasis).

2.52 Insofar as this particular matter is concerned, the political position about the prosecution of cases such as the present did not change until the re-opening of the inquest into the death of Mr Timol. As we now know, the matter was investigated after the 2017 inquest judgment was released and the first respondent then took a decision to prosecute the applicant herein.

2.53 When regard is had to the contents of Macadam's affidavit, there can be no rational basis to suggest that he acted in a cavalier and uncaring manner. The facts set out in his affidavit, confirmed by way of a confirmatory affidavit by Pikoli, clearly indicate that the political interference with the first respondent's prosecutorial decision-making processes did not only start in 2007 when Pikoli was suspended from his position as National Director of Public Prosecutions for what he says, amongst others, deciding to prosecute cases such as the present.

2.54 It is important to draw the court's special attention to paragraph 5.4 of Pikoli's memorandum to the Minister quoted above. Therein, and based on the prevailing political environment at the time, Pikoli took the view that *"these TRC matters"* could not be proceeded with *"in accordance with the 'normal legal processes' and 'prosecuting mandate'"* of the National Prosecuting Authority. Having taken this view, Pikoli then called for the Government to provide direction as far as the investigations and prosecutions of the TRC matters was concerned. Pikoli correctly called for this direction from the State *"in view of the fact that the NPA prosecutes on behalf of the State."* When regard is had to Pikoli's, Ackermann's, and

Macadam's affidavits, it is clear why Pikoli called for this direction from the State – simply because the State had clearly expressed its reluctance to prosecute cases such as the present and its desire to establish a second amnesty process for people such as the applicant.

2.55 The above being the case, this court cannot perpetuate the injustice to which Mr Timol was subjected by granting an order in terms of which the applicant's prosecution is stayed permanently. Mr Timol was subjected to injustice by the apartheid government and its security agents and cannot again be subjected to injustice by this government, for which he died.

I now turn to respond to some of the paragraphs of the fourth respondent's answering affidavit in which negative and incorrect statements are made about the first respondent.

3 AD PARAGRAPHS 64 AND 65

Ad paragraph 64

3.1 I deny that the National Prosecuting Authority acted in a cavalier and uncaring manner.

3.2 The fourth respondent's suggestion that the approach of the National Prosecuting Authority was cavalier and uncaring is not supported by any admissible evidence placed before the Court. Such a suggestion can easily

be disposed of by reference to the contents of Macadam's affidavit to which I have referred above.

Ad paragraph 65

3.3 The contents of paragraph 65.1 do not justify the criticism levelled against the first respondent. This is so due to the fact that the Amnesty Task Team referred to therein was not created by the first respondent. As I have demonstrated above, the Amnesty Task Team was created by the government, in particular, by the highest level of government. Rightly or wrongly, the Amnesty Task Team was clearly created to find ways to give people such as the applicant herein an opportunity to apply for amnesty in respect of their participation in what is referred to in the Amnesty Task Team's report as "*conflicts of the past.*"

3.4 The contents of paragraph 65.2 are not entirely correct. It is not correct that the amendment to the prosecution policy was intended "*to facilitate impunity for apartheid-era criminals.*" A simple reading of the report of the Amnesty Task Team clearly shows that it was not the intention of government to grant people such as the applicant blanket amnesty. There were stringent requirements with which they had to comply.

3.5 Pikoli's affidavit shows that it is not correct that government intended "*to facilitate impunity for apartheid-era criminals*" where he refers to instances where he refused to accept representations not to prosecute people such as

the applicant. The people referred to in Pikoli's affidavit, whose representations not to be prosecuted he refused, would have been granted amnesty easily if government's intention was indeed "*to facilitate impunity for apartheid-era criminals*" as suggested in paragraph 65.2.

3.6 The contents of paragraph 65.3 are not in dispute and do not justify the relief which the applicant seeks in this application and clearly show that it was former President Mbeki who "*introduced a political pardons program to further accommodate perpetrators*" and not the first respondent.

3.7 The contents of paragraph 65.4 are not in dispute.

3.8 The contents of paragraph 65.5 must necessarily bring an end to any criticism levelled against the first respondent by the fourth respondent. In paragraph 65.5, the fourth respondent says that the "*NPA officials were instructed and cajoled by cabinet ministers and the then Commissioner of the SAPS to stop all work on the TRC cases*" which cases included the case of Mr. Timol. On this version, there could not have been collusion between the police and the National Prosecuting Authority.

4 AD PARAGRAPHS 82 TO 94

Ad paragraph 82

4.1 The cover-up of political crimes referred to in paragraph 82 which the fourth respondent says it "*naturally explains the inaction between 1971 and*

1994" is not different from the political interference which resulted in cases such as the present not being prosecuted immediately. For this reason, there is no basis to blame the first respondent and the National Prosecuting Authority for the delays in prosecuting this case.

Ad paragraph 83

4.2 There is no basis to suspect that the first respondent did not explain the delay as a result of an ulterior or improper motive. The position is simply that the applicant did not in his founding affidavit make out a case which required an explanation for the delay in the manner in which the fourth respondent has done in his answering affidavit.

4.3 It is clear from the applicant's founding affidavit that the applicant did not have much information on the basis of which he could criticize and blame the first respondent for the delays in the manner done by the fourth respondent in his answering affidavit. In fact, the fourth respondent's answering affidavit reads like a supporting affidavit on behalf of the applicant.

Ad paragraph 84

4.4 I have already dealt with the contents of paragraph 84 elsewhere above in this supplementary answering affidavit.

Ad paragraph 85

4.5 I have already dealt with the contents of paragraph 85 elsewhere above in this supplementary answering affidavit.

Ad paragraph 86

4.6 The statements and conclusions attributed to Pikoli and Ackermann in paragraph 86 are not in dispute.

Ad paragraph 87

4.7 I fail to understand the purpose of the contents of paragraph 87 because the fourth respondent is fully aware that the first respondent herein did not oppose the application referred to therein. Insofar as the first respondent did not oppose the application referred to in paragraph 87, it was not necessary for it to file an answering affidavit. The applicant's legal representatives are clearly aware of this.

4.8 The contents of paragraph 87 are clearly intended to create unnecessary sensation and negative atmosphere against the first respondent and the SAPS because a false impression is created that they were supposed to file answering affidavits but neglected to do so (even though they did not oppose the application).

4.9 The alleged "*considerable publicity that the case attracted*" did not on its own justify the filing of answering affidavits in circumstances where the first respondent and the SAPS decided not to oppose the application in issue.

Ad paragraph 88

4.10 I have already dealt with the contents of paragraph 88 elsewhere above in this supplementary answering affidavit.

Ad paragraph 89

4.11 I draw the Court's attention to the fourth respondent's conclusion that "*the real reason for the delay in investigating and prosecuting apartheid-era perpetrators like Rodrigues in the democratic-era*" is the "*manipulation of the criminal justice system to protect individuals from prosecution*" referred to in paragraph 88 and the political interference with the independence of the National Prosecuting Authority – none of which was done by the first respondent. On the fourth respondent's own version, it is the first respondent who was politically interfered with.

Ad paragraph 90

4.12 I admit that the unlawful interference with the first respondent's duties and the manipulation of the criminal justice system referred to in the fourth respondent's answering affidavit is not sufficient to justify the granting of a

permanent stay of the prosecution instituted against the applicant. There is no reason why the fourth respondent relies on the unlawful interference with the first respondent only to say it does not justify the relief sought.

Ad paragraph 91

4.13 The contents of paragraph 91 are admitted.

Ad paragraphs 92 and 93

4.14 The contents of paragraphs 92 and 93 are not in dispute.

4.15 It is not in the interests of justice to grant the relief which the applicant seeks on the basis of what the fourth respondent says was an unlawful manipulation of the criminal justice system and unlawful political interference with the first respondent's prosecutorial decision-making processes.

Ad paragraph 94

4.16 In paragraph 94 of his answering affidavit, the fourth respondent seeks to suggest that the National Prosecuting Authority and the South African Police Service are not doing anything about the possible prosecution of cases such as the present. I deny this.

4.17 The cases to which the fourth respondent refers are 9 deaths cases and 11 cases relating to the murder, kidnapping and torture of political activists. These cases include the so-called Cradock 4 and Pebco 3 murders and were placed before the Directorate for Priority Crimes Investigations and the National Prosecuting Authority in January 2018. I deny that "*absolutely no progress has been made in any of these 20 cases.*"

4.17.1 One of the above cases relates to the death of Hoosen Haffejee. In this case, the second respondent has approved the re-opening of the inquest into this death and the fourth respondent is fully aware that this matter is under investigation as it is apparent from the letter attached hereto as **SA2**.

4.17.2 Since the aforesaid cases where allocated to the Directorate for Priority Crimes Investigations and the National Prosecuting Authority, all the required support and resources have been provided to investigate and to then prosecute these matters.

4.17.3 A task team of 15 police officers has been constituted and each case has been allocated at least two investigators. This task team consists of members of the Crimes Against the State unit of the South African Police Service.

4.17.4 Progress meetings have been held on these cases and the fourth respondent and the fourth respondent's investigator, Frank Dutton have attended some of these meetings.

4.17.5 I am also aware that the fourth respondent's investigator, Frank Dutton, has interacted with Captain Chantelle Simpson of the South African Police Service on these matters and the fourth respondent must be fully aware of such interactions but creates a wrong impression that nothing has been done. This wrong impression is deliberately created in order to portray the National Prosecuting Authority and the South African Police Service in a negative light – which does not serve any purpose in proceedings such as the present.

4.17.6 I deny that two former members of the old South African Police's Security Branch were appointed "*to lead these investigations*." It serves no purpose for the fourth respondent to accuse the South African Police Service and the National Prosecuting Authority and their officials without producing any evidence to support such accusation.

4.18 For the reasons stated above, the contents of paragraph 94 do not advance the fourth respondent's case, they are in any event irrelevant and ought to be rejected.

5 AD PARAGRAPHS 97 TO 99

Ad paragraph 97

5.1 I deny that the SAPS and the National Prosecuting Authority colluded with political forces to ensure the deliberate suppression of apartheid-era cases.

5.2 The fourth respondent's suggestion that the SAPS and the National Prosecuting Authority colluded with political forces is not supported by any admissible evidence placed before the Court. Of importance, this suggestion is inconsistent with some of the evidence upon which the fourth respondent relies which the fourth respondent himself has placed before the Court.

5.3 Elsewhere in his answering affidavit, the fourth respondent makes it clear that there was political interference and political pressure brought to bear upon the National Prosecuting Authority. This being the case, one fails to understand as to on what factual basis the fourth respondent can begin to speculate, let alone suggest, that the National Prosecuting Authority "*colluded with political forces.*" Such a suggestion, if accepted, would mean that Pikoli and Ackerman on whose affidavits the applicant heavily relies, are guilty of the collusion referred to in paragraph 97.

Ad paragraph 98

5.4 I do not deny that the National Prosecuting Authority was subjected to political interference and political pressure not to immediately prosecute cases such as the present. Incidentally, this also happened during the time that Pikoli was the National Director of Public Prosecutions.

Ad paragraphs 99 and 100

5.5 The contents of paragraph 99 are not in dispute.

5.6 The contents of paragraph 100 are not in dispute.

6 AD PARAGRAPHS 140 TO 148

Ad paragraph 141

6.1 The contents of paragraph 141 do not take the matter any further.

6.2 In paragraph 141 of his answering affidavit, the fourth respondent is responding to paragraphs 1.1 to 2.2.4 of the first respondent's answering affidavit to the applicant's founding affidavit. There is no basis to criticize the first respondent because the applicant's founding affidavit did not call the first respondent to provide an explanation for what the fourth respondent refers to as "*the near total inaction of the NPA.*"

Ad paragraph 142

6.3 I have already dealt with the contents of paragraph 142 elsewhere above in this supplementary answering affidavit.

Ad paragraph 143

6.4 The contents of paragraph 143 clearly reveal the fourth respondent's motive in painting the first respondent in a negative light. The motive is to obtain answers to the criticism levelled against the first respondent which the fourth respondent would then use to call "*for an inquiry into those prosecutors and police who failed in their duties to uphold the rule of law.*" This is clearly wrong.

6.5 The contents of the affidavits filed in this application for purposes of opposing the relief which the applicant seeks in this application were clearly not intended to defend the first respondent and "*those prosecutors and police*" who allegedly failed in their duties to uphold the rule of law. For this reason, it would be wrong to create an impression that such affidavits also constitute a defence against an allegation that "*those prosecutors and police*" failed in their duties to uphold the rule of law.

6.6 For the avoidance of any doubt, I expressly state that the purpose of this affidavit and the other affidavits filed on behalf of the first respondent in this application are not intended to be an answer and shall not be used as an

answer to the unfounded allegation that "*those prosecutors and police*" have failed in their duties to uphold the rule of law.

Ad paragraph 144

6.7 The contents of paragraph 144 do not require a further response from the first respondent.

Ad paragraph 145

6.8 The contents of paragraph 145 do not justify the relief which the applicant seeks in this application and it is not clear to me as to why the fourth respondent chose to include them in his answering affidavit, the purpose of which is, so I thought, to oppose the relief which the applicant seeks.

Ad paragraph 146

6.9 The affidavit of the investigating officer, Captain FN Mathipa is attached herewith as **SA3 (i)** and the unopposed bail application as **SA 3 (ii)**.

Ad paragraph 147

6.10 The contents of paragraph 147 do not require a further response from the first respondent other than to state that the fourth respondent himself has already told the Court of the reasons why this case was not investigated and prosecuted earlier than now. It accordingly does not serve a purpose to repeat the same contentions differently.

Ad paragraph 148

6.11 The affidavit of Macadam referred to in my main answering affidavit is the one now attached hereto as SA1.

6.12 I stand by what is stated in my main answering affidavit.

6.13 In conclusion, I state that the contents of the fourth respondent's answering affidavit do not justify any of the criticism levelled against the third respondent and the National Prosecuting Authority and also do not justify the granting of the permanent stay of prosecution relief which is sought by the applicant in this application.

6.14 In the premises, I persist that the application for a permanent stay of the criminal prosecution instituted against the applicant ought to be dismissed with costs including the costs consequent upon the employment of two counsel.

WHEREFORE, I pray that it may please the Court to dismiss the application with costs including the costs consequent upon the employment of two counsel.

JACOBUS PETRUS PRETORIUS

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 4th day of February 2019, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.

Ally S. Murray Captain

COMMISSIONER OF OATHS

FULL NAMES:

BUSINESS ADDRESS:

OFFICE:

JPP3

Torie Pretorius (JP)

From: Moray Hathorn <moray.hathorn@webberwentzel.com>
Sent: Thursday, September 14, 2017 7:14 AM
To: Torie Pretorius (JP); Kim Benjamin
Cc: Shaun SK. Abrahams
Subject: FW: Inquest: Late Neil Aggett
Attachments: letter to Adv Pretorius Sc 21_2_2017.PDF; 22 02 2017 Inquest Late Neil Aggett.pdf

Dear Torie

Thank you for the NPA's very constructive role in the Timol inquest.

With the Timol inquest nearly behind us, we request that we re- focus attention on the Neil Aggett case.

I attach my letter dated 21 February 2017 and your response dated 22 February 2017. Email correspondence that then ensued between us appears below.

The question is when a decision might be expected in regard to the re- opening of the inquest in respect of the death of the late Neil Aggett? Should we meet in this regard?

kind regards

Moray Hathorn
Partner

WEBBER WENTZEL
in alliance with > Linklaters

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E: moray.hathorn@webberwentzel.com
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From: Moray Hathorn
Sent: 24 March 2017 09:50
To: 'jppretorius@npa.gov.za'
Subject: RE: Inquests: Aggett/Timol

Dear Torie

I have left a telephone message.

What time are we meeting the judge on 29 March?

Could we (you, Howard and me) meet beforehand at Tribeca restaurant over a copy of coffee to prepare for our meeting with Judge Mothle please.

kind regards
Moray Hathorn

From: jppretorius@npa.gov.za [mailto:jppretorius@npa.gov.za]
Sent: 31 March 2016 11:18
To: Moray Hathorn
Subject: FW: Inquests: Aggett/Timol

Dear Moray

In regard to the **Ahmed Timol** - matter we are at a very sensitive stage of investigation and you have to allow us some time to conclude this investigation.

In regard to the **Neil Aggett matter** I am particularly interested in the allegations that Adv George Bizos chambers were bugged and the police witnesses were prepared for cross-examination. I did work with Mr Paul Erasmus at the Goldstone Commission and perused his evidence. I would really appreciate it if I can obtain the evidence regarding the illegal bugging of Adv Bizos office as this could vitiate the previous proceedings. Even before submissions were made to this office the matters were investigated under Adv Macadam and I have to consult with investigating officers in regard to the matters.

Regards
J P Pretorius

TORIE PRETORIUS
PRIORITY CRIMES LITIGATION UNIT
+27 12 3612283 08482 11378

From: Helena Zwart (H)
Sent: 29 March 2016 08:26 AM
To: Torie Pretorius (JP)
Subject: FW: Inquests: Aggett/Timol

From: Moray Hathorn [mailto:moray.hathorn@webberwentzel.com]
Sent: 22 March 2016 10:10 AM
To: Helena Zwart (H)
Subject: RE: Inquests: Aggett/Timol

Dear Dr Pretorius

Thank you for your letter dated 11 March 2016.

Has anything further arisen out of your meeting with the NDPP on 16 March?

Kind regards
Moray Hathorn

From: Helena Zwart (H) [mailto:hzwart@npa.gov.za]
Sent: 11 March 2016 15:59
To: Moray Hathorn
Subject: Inquests: Aggett/Timol

Dear Mr Hathorn

Attached please find a letter from Dr JP Pretorius SC for your attention.

Kind regards

Helena Zwart
PCLU : NPA

Priority Crimes Litigation Unit

NATIONAL PROSECUTING AUTHORITY
South Africa

3Mr Ref: 10/3/5/PCLU – 1/2016

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Per email: Imtiaz@isolvtech.com

ATTENTION: Mr. Imtiaz Cajee

Dear Sir,

RE: TIMOL MATTER & OTHER TRC CASES

Your email dated 11 April 2018 refers.

1. **Ad opening paragraph:** In your opening paragraph, you imply that my communication and feedback were scant. This is entirely incorrect. To this end, I deem it prudent to record the following timeline:

    a. 17 October 2017: I answered a query on the same day it was sent to me, informing you that the NPA has already instructed SAPS the previous week, after the judgment to open 3 dockets: "*One regarding murder for Roderiques in Johannesburg and 2 regarding perjury (Else and Seth Sons) in Pretoria.*" This office also specifically indicated that the dockets would have to be allocated to prosecutors.

b. 19 and 20 October 2017: Further correspondence was received and we responded that cases have been opened: "*Docket 822/10/2017 in regard to Neville Els at Pretoria Central. Cas 824/10/2017 in regard to Seth Sons also at Pretoria Central and 798/10/2017 in regard to Roderiques at Johannesburg Central.*"

c. 24 October 2017: A formal letter was delivered to your office confirming information previously shared. In the letter, I state: "*The investigators are not necessarily bound by the findings in that accessory after the fact could possibly have prescribed. However, I indicated that this office is of the opinion that there was dolus eventualis and that Roderiques have placed himself on the scene of the murder therefore three (3) dockets have been opened as recommended by the honourable judge Mothle.*" I furthermore made it clear that PCLU "is loath to provide **a time frame for another institution and investigation**."

d. 30 November 2017: Another formal letter was sent to you, indicating that the matter has been discussed with the NDPP and relevant DPP. It is also made clear that the dockets will be handed over to assigned prosecutors.

e. 6 December 2017: We had a telephone discussion regarding a plea bargain.

f. 4 January 2018: You sent correspondence to me, specifically stating ***"I am well aware that this matter is now out of your jurisdiction."***

g. 5 January 2018: I respond to your query dated 4 January 2018, emphasizing that *"It would be inappropriate for me to discuss any plea bargain before the relevant prosecutors have applied their minds to the respective matters."* I state that I cannot prejudge the discretion of the prosecutors to whom it has been allocated.

h. 7 February 2018: I reply to a query from you received on the very same day regarding completion of the dockets.

i. 1 March 2018: We convened for a meeting at the Hawks offices, which you attended and feedback was given.

j. 6 March 2018: After you request feedback, we again respond on the same day, specifically stating that the dockets were delivered to Adv. Chauke and the other 2 dockets to Adv. George Baloyi.

k. On the 7 April 2018 you required an update from me again. On the 9 April 2018 you state: "As per mail below and discussed earlier today, please provide way forward on the Ahmed Timol matter. As you well aware, Judge Mothle ruled on 12 October 2017 that Roderiques, Els and Sons must be charged. You continue: "the above are not yet charged. ... **It is imperative that these officers be charged as per ruling made by Judge Mothle.**" With respect the judge said the officers must be investigated, not charged *per se*. With respect you are well aware that it is outside this office jurisdiction yet you want answer from me and you prescribe that the officers should be charged

l. 9 April 2018: We convened for a meeting and I responded to your query of 7 April 2018.

2. **Ad paragraph 1:** As you have mentioned, I *joked* about being "harassed". My apologies if this came across as insensitive; it was not my intention. As you can see from the above timeline, I am committed and fully grasp the gravity of the matter. However, as you well know, I cannot provide you with updates on cases that do no resort with me. I am not responsible for the investigations.

3. **Ad paragraphs 2 & 3:** This is not within my jurisdiction.

4. **Ad paragraph 4:** When resources are allocated, due regard is given to the time, gravity, and sensitivity of a matter. I was however not involved in

the allocation of IO's. I reiterate that the NPA does not investigate; we prosecute.

5. **Ad paragraph 5:** I take offense to your sweeping and slanderous accusation of an "old guard" who are "coordinating to manage these investigations" to "prevent the truth from being exposed." After all the work and time that I've committed to fight the injustices of apartheid, including with the Timol, De Kock, and Basson cases, I feel that I need not explain myself nor that my record be defended or explained.

6. **Ad paragraph 6:** As an experienced prosecutor with vast TRC experience, Adv Macadam has been assigned to this matter after considering all the different aspects and resource requirements.

7. **Escalation of the Matter:** I have taken note that the matter has been escalated to the Deputy Minister.

8. **Impartiality and Fairness of Investigations:** It is stated in *S v Nkabinde* 1998 (8) BCLR 996 (N) that the requirements of fairness and impartiality is also extending to the investigation that *precedes* a criminal trial and that it is not restricted to trial proceedings alone. The investigation must be conducted with the same degree of impartiality and fairness as the trial itself. Where this is lacking in investigations, the trial proceedings themselves may be tainted with unfairness to the extent that a trial court cannot held that the accused has had a fair trial. In *Nkabinde,* the complainant and one Mpa Mtolo, a pivotal State witness in respect of several counts, were made part of the investigation team. These were persons who had a vested interest in the progression and success of the investigation, as well as the outcome of the trial. According to the judge "*they can, by no means be said to be clothed with that degree of impartiality and objectivity expected of any investigating officer with no personal stake*."

9. **Conclusion and Further Communication:** We must allow for an impartial and fair investigation and trial and to ensure that justice is served. Justice must not only be done but must be seen to be done. We

will do our work diligently and to the best of our abilities. This unit need to focus our resources on getting these cases to court. It is the Police's responsibility to investigate and ours to provide guidance if and when required. Kindly communicate with me through the appropriate channels and we will provide feedback to the attorneys as and when appropriate.

DR JP PRETORIUS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
PRIORITY CRIMES LITIGATION UNIT
DATE 10/05/2018

From: Seleka Peter <PSeleka@justice.gov.za>
Sent: 03 December 2018 02:12 PM
To: Thobile T. Chitha <tchitha@npa.gov.za>; Shubnum H. Singh <shsingh@npa.gov.za>; Susan Bukau <sbukau@npa.gov.za>; Torie Pretorius (JP) <jppretorius@npa.gov.za>
Cc: Chris Macadam <cmacadam@npa.gov.za>; Sifiso SJ. Khumalo <sjKhumalo@npa.gov.za>
Subject: RE: TIMOL: MACADAM AFFIDAVIT AND ANNEXURES

Dear All
What we are essentially saying is that due to time constraint we file the first draft.

From: Thobile T. Chitha [mailto:tchitha@npa.gov.za]
Sent: 03 December 2018 12:42 PM
To: Singh Shubnum (NPA Contact); Bukau Susan (NPA Contact); Pretorius Torie (NPA Contact)
Cc: Macadam Chris (NPA Contact); Khumalo Sifiso (NPA Contact); Seleka Peter
Subject: RE: TIMOL: MACADAM AFFIDAVIT AND ANNEXURES

Dear Dr. Torie,

Kindly be advised that the state attorney informed me that counsel is not willing to confirm the affidavit that makes reference to the Affidavit of Adv McAdams who he has not consulted. It will create problems for him. As result the state attorney is suggesting that the original draft be filed and a supplementary affidavit of Adv McAdams be filed later after having consulted with counsel.

I look forward to your response and guidance.

Regards

Thobile

From: Shubnum H. Singh <shsingh@npa.gov.za>
Sent: Monday, December 3, 2018 10:45 AM
To: Thobile T. Chitha <tchitha@npa.gov.za>; Susan Bukau <sbukau@npa.gov.za>; Torie Pretorius (JP) <jppretorius@npa.gov.za>
Cc: Chris Macadam <cmacadam@npa.gov.za>; Sifiso SJ. Khumalo <sjKhumalo@npa.gov.za>; PSeleka@justice.gov.za
Subject: RE: TIMOL: MACADAM AFFIDAVIT AND ANNEXURES

Please note that Dr Pretorius sent it on Friday to counsel.

He followed it up with a call to advise that should there be any corrections by counsel he would be amenable to the advice thereon.

I have contacted Dr Pretorius. He has not yet been advised of any amendments.

regards

From: Thobile T. Chitha <tchitha@npa.gov.za>
Sent: 03 December 2018 10:39 AM
To: Shubnum H. Singh <shsingh@npa.gov.za>; Susan Bukau <sbukau@npa.gov.za>; Torie Pretorius (JP)

JPP6

Torie Pretorius (JP)

From: Helena Zwart (H)
Sent: Thursday, August 31, 2017 11:39 AM
To: Torie Pretorius (JP); Shubnum H. Singh
Subject: FW: TIMOL INQUEST

Dear All

Please see the email from Mr Cajee below.

Kind regards

Helena

From: Helena Zwart (H)
Sent: 31 August 2017 11:35 AM
To: 'Imtiaz Cajee' <imtiaz@isolvtech.com>
Subject: RE: TIMOL INQUEST

Dear Mr Cajee

Thank you for your email. I will convey your message to the NDPP and his staff.

Kind regards

Helena

From: Imtiaz Cajee [mailto:imtiaz@isolvtech.com]
Sent: 31 August 2017 11:12 AM
To: Helena Zwart (H) <hzwart@npa.gov.za>
Subject: Fw: TIMOL INQUEST

Morning Helena

Hope you well?

Just checking to see if you got my mail below? And not lost in cyberspace :-)

Kind regards

Imtiaz

From: Imtiaz Cajee
Sent: 27 August 2017 12:26 PM
To: Helena Zwart (H)
Subject: TIMOL INQUEST

Dear Helena

Hope you well?

Can you please forward this message to the NDPP?

Kind Regards

Imtiaz

Dear NDPP

Hope you well?

It appears as if it was just the other day (19th January 2016) when we made a presentation to you and your team on the re-opening of the Ahmed Timol Inquest. Almost 20 months have passed and the re-opened inquest is over as we await final judgment from Billy Mothle.

I want to once again thank you, the NDPP, for supporting our application to re-open the inquest into the death of my beloved Uncle, Ahmed Timol, who died in police detention in October 1971. It has indeed been an emotional 19 days attending the inquest, but something that is long overdue in our democratic South Africa.

Please pass my appreciation to the NPA Team (Adv. Torie Pretorius, Adv. Shubnum Singh Investigating Officer Ben Nel) who had been professional and thorough in their conduct during the inquest proceedings. This is highly appreciated by the Timol Family as we eagerly await judgment.

Once again, your assistance in this matter is highly appreciated.

Kind Regards

Imtiaz Ahmed Cajee