

# No slipping through the cracks for TRC cases



By: Tymon Smith – 7 Jun 2021

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The ANC leadership will not get away with ignoring the political interference that has allowed apartheid criminals to escape punishment for the murders they committed.

What is left to do for the families of apartheid's victims to convince the ANC government that the biggest reason for the slow prosecution of these cases has been the continued, wilful political interference of high-ranking party members in the work of the National Prosecuting Authority (NPA)?

To whom must these families, their legal representatives and the organisations fighting for finalisation of the cases that emanated from the Truth and Reconciliation Commission (TRC) still appeal? When will those who have delayed these prosecutions and enabled perpetrators to escape justice be called to account?

These questions arise in the light of recent remarks by ANC legal adviser Krish Naidoo, a member of the ANC joint committee established in 2020 to help speed up TRC-related prosecutions. A former human rights lawyer who represented many anti-apartheid activists in the 1980s, Naidoo was interviewed in February for an Al Jazeera documentary about the Cradock Four case.

The documentary, *My Father Died For This*, was broadcast early in May. Naidoo said “there is no reason, no explanation” for why there have been no successful prosecutions of TRC cases in 27 years of democracy. “It could have been lack of focus, it could have been bad planning, not being prioritised properly. I am not aware of any agreement regarding non-prosecution of apartheid-era crimes. Some matters would have slipped through the cracks and the Cradock Four case would have been one of them.”

In a City Press article on 23 May about University of Western Cape law students volunteering to help with TRC-related investigations and prosecutions, Naidoo said: “Since 2003, insufficient attention has been paid by the ANC to giving that closure to families of apartheid-era crimes. The ANC has no knowledge of whether such lethargy arose from political interference.”

These comments could be those of someone grossly misinformed about an issue that is of fundamental import to the task of the committee on which he serves. Or, they could be indicative of the ANC's refusal to acknowledge the political interference that a full bench of the high court in Johannesburg and the NPA have accepted in proceedings related to the

prosecution of former security police clerk Joao Rodrigues for his involvement in the death of anti-apartheid activist Ahmed Timol.

### **Damning affidavits**

The allegations of political interference first surfaced in 2015 in affidavits made by Anton Ackerman, former head of the NPA's priority crimes litigation unit (PCLU) – established to deal with TRC cases – and former national director of public prosecutions Vusi Pikoli. They were submitted as part of a case brought by Thembi Nkadimeng to compel the NPA to prosecute those responsible for the 1983 kidnapping and murder of her sister Nokuthula Simelane, an Umkhonto weSizwe cadre.

The affidavits painted a picture of sustained interference by members of the Thabo Mbeki administration – including former minister of justice and correctional services Brigitte Mabandla and the late former police commissioner Jackie Selebi – in the NPA's mandate to bring to book perpetrators who had either not applied for TRC amnesty or not been granted it. The media reported widely on them and they were subsequently submitted into evidence at the reopened inquest in 2017 into the death of Timol as well as the reopened inquest into the death of Neil Aggett that began last year.

During the hearing of Rodrigues' appeal in 2019, former PCLU member Chris Macadam submitted a further affidavit giving more details of political interference. Macadam's colleague, NPA prosecutor Torie Pretorius, admitted and accepted the role political interference played in the prosecution of the TRC cases, in an affidavit he submitted during the same hearing.

The Johannesburg high court judgment in the Rodrigues matter expressed dismay at the extent to which members of the executive had blatantly tried to interfere in TRC prosecutions. It directed that those implicated in the affidavits be brought to the attention of the national director of public prosecutions for action, and called on the government and the NPA to give a public assurance that such interference would never again occur. It also said they should specifically indicate the measures to be taken to ensure this.

The damning judgment spurred the victims' families and a group of former TRC commissioners to write a letter to President Cyril Ramaphosa in February 2019 calling on him to appoint a commission of inquiry to investigate the allegations of political interference. No response was received from the Presidency and the call was repeated in subsequent letters to Ramaphosa last year and, most recently, in May this year.

A request for comment was redirected to the justice ministry, whose spokesperson, Chrispin Phiri, said: "The concerns raised [in the letters to the president] were reflected in the judgment of the high court in the Rodrigues matter. In light of this judgment, the ministry is in the process of developing a mechanism which will implement the court's directions."

Lukhanyo Calata, son of Fort Calata, one of the Cradock Four, prepared a presentation in May 2019 for the Zondo commission. He asked it to investigate the capture of the NPA with

regard to TRC prosecutions, but it was unable to include the matter in its investigation into state capture.

### **Hear no evil**

In addition to the issue of political interference being widely reported in the media, deliberated in the courts and reaching the ears of the president, the Foundation for Human Rights (FHR) and family members of apartheid victims say it has been presented to the ANC's joint committee members, including Naidoo.

They questioned Naidoo's comments in the documentary in a letter sent to him and task team chair Jessie Duarte, as well as other members of the ANC's national executive committee, on 14 May. They demanded to know whether his comments represented the ANC's position and if they were a deliberate attempt to mislead the public and shield the ANC from unwanted scrutiny of its members' alleged involvement in political interference.

Approached for comment, Naidoo said his comments "reflect the ANC's position". In response to questions about his knowledge of the affidavits in the Simelane case and the allegations made therein, as well as the high court judgment in the Rodrigues matter and the affidavits submitted as part of those proceedings, Naidoo said: "I am not aware of these events and allegations of political interference but recall they were made by FHR members from time to time in meetings held with the ANC delegation, specifically in October last year. The ANC encouraged the FHR to take up this very serious issue with the relevant authorities in the state."

As a former human rights lawyer, Naidoo said it is "important to unravel this allegation of political interference and establish where it is coming from. If it is public service officials, it must be reported to the appropriate authorities for further investigation and action. If it is ANC politicians, then the FHR must name these politicians and the ANC will act... I believe the FHR must be more forthright about the information it has about political interference so that something can be done quickly."

FHR director Yasmin Sooka said there is no way that Naidoo and the ANC "can say that they are unaware of this stuff. It is, all of it, in black and white. And we have proof of the fact that we've sent them this documentation."

### **Obfuscation and a vague memory**

Sources confirm that Naidoo was at a meeting last year in which a document containing a timeline of incidents of political interference between 2003 and 2019 was presented to the joint committee. Calata's legal team prepared it as part of his presentation to the Zondo commission and clearly outlined the key moments. It also named the ANC members and former government officials who had been implicated in hampering investigations and prosecutions.

Asked whether he had been present and seen the timeline, Naidoo said the FHR had made five presentations and it “lamented the slow pace of finalisation of the cases that were outstanding”.

“The FHR was not very happy with the role of the government and the ruling party in resolving apartheid-era crimes and they have every reason to lament [this],” he added. “There was mention of political interference, but the main purpose of the meeting was to solicit ANC assistance to access the President’s Fund for funds to enable the FHR to pay for legal services and to persuade the government to establish a dedicated prosecution unit to deal with the outstanding cases expeditiously.”

For Calata, whose family is still waiting for a decision from the NPA on whether or not it will prosecute those responsible for the murders of the Cradock Four in 1985, Naidoo’s comments “speak to a lack of care, a lack of concern, a lack of empathy, a lack of understanding. It speaks to an aloofness, it speaks to an organisation that is completely out of touch with the feeling of the people who got it to where it is. My father died pursuing the interests of the ANC.

“In Black culture, we recognise our ancestors,” Calata pointed out. “When something happens, good or bad, we give tribute to them, we hold traditional ceremonies for them because we are saying, ‘You guys that went before us, we acknowledge you.’ Now, when the ANC does not govern in the honour of the people that got it to where it is, when the ANC ... fails to govern in honour and in memory of the people that laid down their lives for our freedom and our democracy, it ends up being in this position ... where a legal adviser of the ANC can say, ‘Oh, but the Cradock Four murderers, that case slipped through the cracks.’”

### **Issue won’t go away**

While Calata, Sooka and others have acknowledged that the ANC’s task team is a step in the right direction, they are adamant the issue cannot be ignored. Political interference led to significant delays in the prosecutions of these cases and the years of inaction, in many instances, allowed perpetrators to escape justice.

The documentary makers told Calata recently that Eric Taylor died in 2016. He was thought to be the last surviving member of the group of Security Branch officers who were directly responsible for murdering the Cradock Four and were denied amnesty by the TRC. Eric Winter, the 73-year-old former head of the Security Branch in Cradock, who did not apply for amnesty but gave the orders that led to the murders, is on his deathbed with cancer.

Calata says he and other family members “need to know why these cases have not been prosecuted. We need to know why it is that the TRC recommendations have not been [implemented]. We need to know, when Vusi Pikoli said there was political interference, who interfered with Pikoli, who stopped him from making decisions to prosecute apartheid murderers? Once we know all of that, once we have all of the answers that we require, then we can say, ‘Okay, from here on out, let us all work together to make sure that that never happens again.’”

Until that happens, Calata is adamant that victims will not just sweep the matter of political interference under the carpet and “say, ‘Oh, no, let’s hold hands and sing Kumbaya.’ No, because we have not forgotten because we still don’t have the answers. We don’t have the answers for who politically interfered. We don’t have the answers for who ordered the murders of the Cradock Four. We don’t have the answers as to why those people were never held accountable.”

Calata has also tired of waiting for the NPA to make a decision on the Cradock Four matter. “Here we are a year later and we are still not any closer to a decision. We’re going to court unless they come tomorrow with the decision. We are going to court. I’m done with these people now. We are not going to let up. As long as there’s still one person who can still be held accountable for the murders of the Cradock Four, that’s what we will pursue.”

23 May 2021

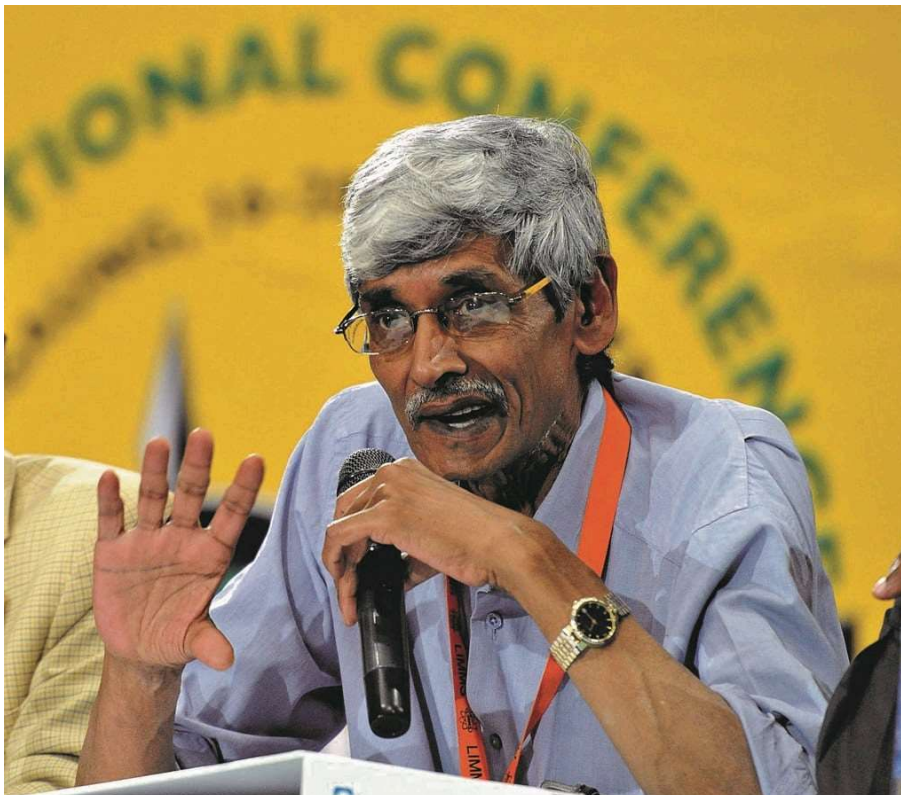
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ANC legal guru Krish Naidoo said many of the universities have responded positively and 150 law students from the University of the Western Cape have volunteered to assist with apartheid-era prosecutions. Photo: ANC Communications Unit

## NEWS

About 150 law students from the University of the Western Cape have volunteered to assist with apartheid-era prosecutions after the National Prosecuting Authority (NPA) failed to rise to the task, a failing that has been attributed to allegations of political interference and a lack of political will from the governing ANC.

The move came about after the ANC was pressed by the Foundation for Human Rights (FHR), led by former Truth and Reconciliation Commission (TRC) commissioner Yasmin Sooka, to renew its commitment to prosecuting crimes in which many anti-apartheid activists were murdered, tortured or maimed.

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perpetrators of apartheid-era crimes and to enlist the help of law students.

"Many of the universities have responded positively and 150 law students from the University of the Western Cape have volunteered to assist with apartheid-era prosecutions," ANC legal guru Krish Naidoo said yesterday.

Evidence had previously been led in courts of political interference in the prosecution of TRC cases by various Cabinet ministers and senior officials in the SA Police Service. In 2019, the NPA admitted the same during the case on the killing of anti-apartheid activist Ahmed Timol.

Last year, the FHR asked President Cyril Ramaphosa to institute a commission of inquiry into the lack of progress in bringing apartheid-era criminals to book, but the plea was ignored. In March, the plea was supported by 18 leading human rights organisations.

During Thursday's Mxenge Memorial Lecture at the University of KwaZulu-Natal, Advocate Dumisa Ntsebeza SC, one of a group of concerned former TRC commissioners who had appealed to Ramaphosa to appoint a commission of inquiry, said the group's "short proposition is that anyone who applied for amnesty but didn't get it, or anyone who should have applied for amnesty but didn't, should be prosecuted".

"Lack of political will by the post-apartheid regime, in my view, is responsible for the failure to prosecute those kinds of cases, hence our campaign for the president to do something. Let's do it in recognition of the fact that Mlungisi Griffiths and Victoria Nonyamezelo Mxenge died such cruel deaths because they dared to live and struggle for a better life for all," Ntsebeza told the audience.

"We owe a lot to them for having sacrificed themselves in order that you and I could live the life they never had: a life free from political assassinations that were sponsored by the state - a state that was determined to stay in power, no matter what. Let the day never come when we say that their deaths were in vain," he said.

In February, the ANC was unable to join a court challenge to force Ramaphosa to institute a commission of inquiry, citing that the notice had been provided with only two days left for a decision to be made.

"It was explained to the FHR that instead of venturing down the road of a blame game, the more appropriate approach would be to use all available resources to expedite these cases and give closure to the families," Naidoo told City Press yesterday.

"Since 2003, insufficient attention has been paid by the ANC to giving that closure to families of apartheid-era crimes. The ANC has no knowledge of whether such lethargy arose from political interference."

He said the FHR raised this matter in meetings with the ANC in October last year, "and seems to have evidence of collusion".

"The FHR was of the view that the slow pace of prosecutions was due to the lack of political will and political interference by politicians," he said.

Naidoo said the ANC then decided to partner with the FHR and several meetings were held between them in the expectation that a renewed joint approach could give impetus to this long overdue matter.

briefed on the developments, he said.

Naidoo added the ANC had obtained the support of the Black Lawyers Association, Advocates for Transformation and the Muslim Lawyers Association.

He said the party was currently working on five cases: those of Stanza Bopape in Tshwane, Mapetla Mohapi in the Eastern Cape and, in the Western Cape, Ashley Kriel, the Gugulethu Seven and Imam Haron.



Justice and Correctional Services Minister Ronald Lamola. Picture: GCIS

Supplied

Earlier this month, in an interview with international television station Al Jazeera, Naidoo was asked why the killers of the Cradock Four and other perpetrators of apartheid-era crimes had not been prosecuted. He replied that these cases had simply "fallen through the cracks".

"There's no reason, there's no explanation for that. It could have been lack of focus, it could have been bad planning, or not being prioritised properly," he said, adding that he had no knowledge of any secret amnesty arrangement.

"I'm not aware of any agreement regarding non-prosecution of perpetrators of apartheid-era crimes. Some matters would have slipped through the cracks and this would have been one of them, I presume."

Chrispin Phiri, spokesperson for Justice and Correctional Services Minister Ronald Lamola, said that on the contrary, the TRC cases were being pursued, as per the feedback from the Hawks and the NPA. He said that as of May last year, 118 cases were being considered. The NPA had 53 cases currently under investigation for prosecution or reopening of inquests, and a further 65 cases have been identified as warranting further investigation by the Hawks.

Letters asking for a commission of inquiry into the suppression of TRC cases were also sent to Ramaphosa on June 23 2019 and June 23 last year by the families of Chief Albert Luthuli, Steve Biko, the Cradock Four, Nokuthula Simelane, Ahmed Timol, Dr Neil Aggett, Imam Haron, Matthews Mabelane, Dr Hoosen Haffejee, Ashley Kriel, Nicodemus Kgoathe, Solomon Modipane, Jacob Monnakgotla, Mapetla Mohapi, Mxolisi "Dicky" Jacob, Caiphus Nyoka, Anton Franschi, Moshin