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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

First Respondent

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE

Second Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

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WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned


VUSUMZI PATRICK PIKOLI

state under oath as follows:

INTRODUCTION

1. I am an advocate of the High Court of South Africa and a former National Director of Public Prosecutions.
2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. I depose to this affidavit at the request of the applicant's legal representatives and in order to ensure that all the relevant facts are placed before this Court.

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PROFESSIONAL EXPERIENCE

4. Prior to 1990 I was a member of Umkhonto weSizwe and I worked for the ANC's legal and constitutional affairs department in exile.
5. Between 1991 and 1994 I worked as a legal adviser with the Munich Reinsurance Company of Africa Limited Group. From 1994 until 1997 I was the Special Advisor to the then Minister of Justice, Mr. Abdullah Omar. My specific mandate was to help restructure the Department of Justice. At the time, there were eleven departments countrywide and I was tasked with amalgamating those departments into one central department.
6. From 1997 to 1999, I served as Deputy-Director General of the Department of Justice. In 1999, I was appointed Director General of the Department of Justice and Constitutional Development and worked in that role until 2005.
7. On 1 February 2005, I was appointed the National Director of Public Prosecutions ("NDPP") by the President in terms of Section 10 of the National Prosecuting Authority Act 32 of 1998 ("NPA Act") as read with Section 179 of the Constitution. My appointment was for a 10 year term as contemplated in Section 12(1) of the NPA Act.
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

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Commission, which investigated allegations of police inefficiency in Khayelitsha as well as allegations of a breakdown in relations between the community of Khayelitsha and the Police. In December 2014 I was appointed as the Western Cape's first police ombudsman.

12. I am a former trustee of the Constitutional Court Trust, a former member of the Magistrate's Commission and a founding member of the International Association of Anti-Corruption Authorities. I am currently an independent director on the board of Cricket South Africa, where I chair the social and ethics committee. Amongst my awards, I was conferred the International Association of Prosecutors Award in 2008.

CONFIRMATION

13. I confirm the contents of the founding affidavit of Themblsile Phumelele Nkadimeng ("the applicant") and the supporting affidavit of Anton Ackermann SC ("Ackermann"), insofar as they relate to me.
14. In particular, I confirm the contents of the applicant's affidavit under the heading "Political constraints". 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, including the kidnapping, assault and murder of Nokuthula Aurelia Simelane, ("Nokuthula") in the case: Priority Investigation: JV Plein: 1469/02/1996

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("the TRC cases").

- 15. In this affidavit I set out evidence that reflects such political interference. I also set out the serious impact that such interference had on the pursuit of the TRC cases by the National Prosecuting Authority (NPA).

THE INDEPENDENCE OF THE NPA

- 16. The Office of the NDPP was created on 1 August 1998 in terms of section 179 (1) of the Constitution. The NDPP is the head of the NPA, and manages the directors of public prosecutions, investigating directors, special directors, and other members of the prosecuting authority either appointed or assigned. During my tenure I was duty bound to carry out the responsibilities set out in the NPA Act as well as the Constitution of the Republic of South Africa.

- 17. As NDPP I strongly believed in the independence of the NPA. I maintained that prosecutors were required to conduct themselves independently, objectively and professionally in making decisions whether to prosecute or not. This view is underscored by section 179(4) of the Constitution and section 32 of the National Prosecuting Authority Act 32 of 1998 ("the NPA Act") which both impose a duty on prosecutors to act "*without fear, favour or prejudice*". These provisions provide both a constitutional and statutory guarantee of independence to the NPA.

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THE TRC CASES

18. In April 2003 President Mbeki received the final TRC report. The President announced in Parliament that the prosecution of persons who did not take part in the TRC process was to be left in the hands of the NPA as part of the "normal legal processes". He also said that those perpetrators who were prepared to unearth the truth would be welcome to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in existing legislation. Former President Mbeki's statement to the national houses of Parliament dated 15 April 2003 is annexed hereto marked "VPP1". Regrettably what was to follow in relation to the TRC cases was anything but the "normal legal processes."
19. In my former capacity as Director General ("DG") of the Department of Justice and Constitutional Development ("DoJ") I had previously been involved in the formulation of a policy to deal with the TRC cases, which were regarded as politically sensitive. On 23 February 2004, I had chaired a Director-General's Forum which appointed a Task Team to report on a mechanism to give effect to the President's objectives.

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20. It is important to note that the recommendation of the Task Team of a two stage process which would have required a recommendation from an inter-departmental task team before the NDPP could institute any criminal proceedings in the political cases was rejected. This was because such a process would have been a violation of prosecutorial independence enshrined in Section 179 of the Constitution.
21. Some of these developments have been highlighted in the extracts from my affidavit filed before the Ginwala Commission in May 2008, which have been annexed to the founding affidavit. For the sake of completeness I highlight some of these facts in this affidavit.
22. In relation to the steps taken by the NPA with regard to the TRC cases prior to my appointment as NDPP on 1 February 2005 I refer to the affidavit of Anton Ackermann SC filed evenhly herewith. On my appointment as NDPP, the Priority Crimes Litigation Unit (PCLU), a sub-unit within the NPA, had already been tasked with handling the TRC cases. The PCLU was headed by Special Director Advocate Anton Ackermann.
23. The decision to prosecute those implicated in the attempted murder, through poisoning, of former church leader and head of the South African Council of Churches, the Reverend Frank Chikane, on 23 April 1989 at the then Jan Smuts Airport, Kempton Park ("the Chikane matter), saw the

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unravelling of the attempts by the NPA to hold apartheid-era perpetrators accountable for their crimes.

24. The initial decision to prosecute three Security Branch members, former Colonel C L Smith, and former Captains G J L H Otto and H J Van Staden, was taken prior to my appointment as NDPP. This decision was taken in November 2004 by Dr. Silas Ramaite SC in his capacity as Acting National Director of Public Prosecutions. However, he instructed that this matter, and all other TRC cases, be held over pending the development of the guidelines to deal with the TRC cases that were to be incorporated into the Prosecution Policy.

Developments since 2005

25. Following the approval by the Minister of Justice, and after consultation with the Directors of Public Prosecutions as required by the NPA Act, the amendments to the Prosecution Policy were tabled in Parliament and became effective on 1 December 2005. The amendments to the Prosecution Policy were titled: "PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994" ("the Prosecution Policy Guidelines" or "the Guidelines"). A copy of the said amendments is annexed to the founding affidavit marked "TN30".

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26. In terms of paragraph B6 of the amended Prosecution Policy it was stipulated that that the PCLU should be assisted in the execution of its duties by a senior designated official from the following State departments or other components of the NPA:
- 26.1. The National Intelligence Agency ("NIA");
 - 26.2. The Detective Division of the South African Police Service ("SAPS");
 - 26.3. The Department of Justice and Constitutional Development; and
 - 26.4. The Directorate of Special Operations ("DSO").
27. When the Prosecution Policy became effective in December 2005 I reviewed the available evidence implicating the three suspects in the Chikane matter, which, in my opinion, was clearly sufficient to justify a prosecution. None had applied for amnesty for this offence. I therefore gave the initial instruction to proceed with the prosecution in February 2006.
28. In response to the said notification the three suspects made representations to me in terms of the Guidelines in support of their contention that they should not be subject to prosecution. These representations were reviewed by a team within the NPA under the

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leadership of Advocate T. Pretorius who reported to me that the representations did not comply with the requirements set out in the Guidelines, insofar as the suspects declined to disclose the full truth. After reviewing the report and the underlying documentation I wrote to the legal representative of the suspects in July 2006 informing him of my intention not to accede to the representations and to pursue the prosecution.

29. Meanwhile in early 2006 I had approached the then Commissioner of Police, the DG of Justice, and the heads of the NIA and the DSO (also known as 'the Scorpions') requesting them to nominate senior officials to assist the PCLU in accordance with the Prosecution Policy guidelines. Unfortunately the SAPS and the NIA never provided the PCLU with the necessary support to conduct its investigations adequately.
30. In early 2006, then Commissioner of Police, Mr. J Selebi, objected to Advocate Ackermann's participation claiming that Ackermann intended to prosecute the leadership of the ANC. This is notwithstanding the formal denial by the NPA that no such plans were in place. I advised Mr. Selebi that Ackermann was appointed as the head of the PCLU under Presidential proclamation and it was not for the SAPS to determine who should discharge the mandate given to the PCLU.
31. I then approached the Presidency in order to secure the necessary

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collaboration of the parties to apply the Prosecution Policy Guidelines. A meeting was arranged in mid-2006 by Reverend Frank Chikane, the then Director General in the Presidency. The meeting was attended by himself, the DGs of Justice and the NIA, Mr. Selebi, the Secretary of the Defence Secretariat, Mr. Jafta from the Presidency and I. Mr. Selebi again complained about Advocate Ackermann's Involvement in the process.

32. Later in 2006 I was summoned to a meeting which was convened at the home of Minister Skweyiya, the then Minister of Social Development. The meeting was attended by the Ministers of Safety and Security and Defence, Minister Thoko Didiza (Acting Minister of Justice and Constitutional Development representing Minister Mabandla who was indisposed) and Mr. Jafta. The meeting was called by Acting Minister Didiza and I was advised that it related to the prosecution in the Chikane matter.
33. At this meeting it became clear that there was a fear that cases like the Chikane matter could open the door to prosecutions of ANC members. I quote hereunder from my affidavit filed before the Ginwala Commission as to what transpired at this meeting:

"The Minister of Safety and Security was concerned about the decision to proceed with the prosecution and with Advocate Ackermann's involvement in the process and the issue of whether it was Advocate Ackermann or me who was behind the decision to

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prosecute.

The Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.

The Minister of Defence had concerns about where the decision to prosecute rested – did it rest with me or did it rest with Advocate Ackermann.

I explained to the Ministers that the decision to proceed with the prosecution rested with me as did all other decisions in regard to post-TRC prosecutions being considered by the PCLU. I assured them that no prosecution would be undertaken without my specific direction and reiterated my concern about the delay in the process particularly in view of the requirement that I report to parliament on these matters.

...The Minister of Defence appeared satisfied with my explanation that I would exercise the decision as to whether there was a prosecution or not. The Minister of Safety and Security appeared to continue to be worried about the involvement of Advocate Ackermann. I have no recollection of a particular position adopted by the Acting Minister of Justice."

- 34. Also in 2006 a further meeting took place at the office of the Presidency. My recollection of this meeting is that it was decided that the working committee or Task Team would not make recommendations on a decision

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as to whether to prosecute or not, but would be responsible for ensuring that I received all the necessary inputs and information from the various departments so as to assist me to make a well-considered decision.

- 35. At this meeting I proposed that Dr Silas Ramaite, the Deputy National Director of Prosecutions, should chair the Task Team. I suggested this in order to counter the complaints in regard to Advocate Ackermann and to get the Task Team working. The proposal was accepted.

- 36. Subsequent to this meeting there was a further meeting of Ministers in the security cluster at the office of the Minister of Safety and Security. This was attended by the Minister for Safety and Security, the Minister of Social Development, Acting Minister Didiza, Mr. Selebi, various DGs and Mr. Jafta. The proposal for the establishment of a working group was put to the Ministers and accepted.

- 37. After this meeting, in early October 2006 I again sent letters to the various Directors General, Mr. Selebi and the DSO inviting them each to nominate a senior official to perform the functions set out in paragraph B6 of the Guidelines.

- 38. The Task Team met for the first time on 12 October 2006. I attended the opening session of the first meeting together with Ms. Kalyani Pillay (my

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adviser), the Directors General of the NIA and Justice and Mr. Jafta from the Presidency. Aside from this meeting, I did not participate further in the activities of the Task Team. I received reports from time to time on their activities. These reports led me to believe that the committee was functioning and securing the requisite co-operation from the other agencies which had previously been missing.

39. Meanwhile I had received further representations from the suspects in the Chikane matter contending that they had received indemnity in respect of the threatened prosecution in terms of the original Indemnity Act of 1990. I sought an independent opinion from senior counsel concerning the validity of this claim of indemnity. The opinion was received in November 2006 and concluded that the claimed indemnities were no bar to prosecution and that the said law had been repealed in 1995.
40. Dr Silas Ramaite reported to me that at the Task Team meeting on 25 October 2006 had received an audit report from Advocate Ackermann on all cases in the possession of the PCLU. Dr. Ramaite reported to me further that the Chikane matter was discussed by Task Team for the first time at its meeting on 6 November 2006. Mr. J Lekalakala of the SAPS stated that the National Commissioner believed that Rev. Chikane was not interested in a prosecution. Advocate Ackermann however indicated that Rev. Chikane had left the matter in the hands of the NPA.

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41. In early December 2006 I was informed by Dr Ramaite of the renewed contention by Mr. Selebi that Reverend Chikane had not been consulted. Reverend Chikane had in fact been extensively consulted in relation to the proposed prosecution. I personally held discussions with him during the course of interactions during 2006 and 2007. I also met with him separately. Reverend Chikane's advised me that while he may have forgiven his perpetrators, insofar as the application of the laws of the land was concerned, the matter must take its ordinary course. If a decision was made by the prosecuting authorities he would accept that.
42. Although I knew that Ackermann had discussed the matter with Rev. Chikane as far back as 2004, in December 2006 I instructed Advocate Ackermann to once again visit Rev Chikane to confirm his position.
43. However, towards the end of 2006 it became clear to me that powerful elements within government structures were determined to impose their will on my prosecutorial decisions. In this regard I quote from my affidavit filed before the Ginwala Commission:

"In December 2006 Dr Ramaite reported to me in regard to the contention raised by Mr. Selebi through Commissioner Jacobs that it was the function of the Task Team that it should make a final recommendation to a body identified as the "Committee of Directors

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General" which would in turn make recommendations to me. In essence the proposal made by Mr. Selebi and subsequently supported by the Directors General of Justice and NIA amounted to a reversion to a two stage process in which my decision on any prosecution would be dependent upon a prior recommendation by an Intervening committee of directors general which would be subject to the same constitutional challenge as had led to the rejection of this proposal in 2004.

It became clear to me that there was a material misunderstanding in regard to the role of the Task Team and that unless this was resolved, I would not be able to carry out my functions within the contemplation of the relevant legislation and as envisaged by the Government."

Developments from 2007

44. In early 2007, as a result of the differences in approach that had developed between the NPA and the SAPS, NIA and DoJ I informed Mr. Selebi and the Directors General that there was a serious misunderstanding. I resolved to approach the Minister of Justice and request her guidance. Pending such response the functioning of the Task Team was compromised by the uncertainty and it held no further meetings until 8 August 2007.

45. Towards the end of January 2007 Advocate Ackermann and Advocate Mthunzi Mhaga (also of the PCLU) reported to me that they had met with

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Reverend Chikane on 22 January 2007 and that he had reaffirmed his attitude, namely that he was not against a prosecution and that the matter should take its ordinary course. In the light of this confirmation I wrote to the legal representatives of Messrs. Otto, Smith and van Staden on 25 January 2007 and informed them that the matter would now proceed and I instructed the PCLU to act accordingly.

46. Around this time, the former Minister of Police, Adriaan Vlok and the former Commissioner of Police, General Johann van der Merwe, had both made representations to me as contemplated in the Guidelines. They both admitted to authorising the murder of Reverend Chikane and requested me not to prosecute them in the light of this disclosure. However, they declined to make full disclosure in response to requests for information. I accordingly declined to accede to their request that they be given immunity from prosecution in terms of the Guidelines.
47. On 6 February 2007 I had a meeting with the Minister of Justice and Constitutional Development, Mrs. B S Mabandla. During this meeting it appears that she had gained the impression that I had agreed not to pursue the TRC cases. On 8 February 2007, she addressed a letter to me titled "TRC MATTERS", a copy of which is annexed hereto marked "VPP2" in which she stated the following:

"I must advise you at the outset that the media articles alleging that

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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 go ahead with 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."

48. An example of one of the articles in the press is from the Beeld newspaper titled "Cops up for apartheid crimes" which was published on 7 February 2007. A copy of this article is annexed hereto marked "VPP3".
49. I am at a loss to explain how the Minister reached such a conclusion. Her letter disclosed an assumption that the TRC matters will not be prosecuted. I found this to be a disturbing development as it appeared that at a political level there was an expectation that I would not prosecute the TRC cases. I regarded such an expectation as unwarranted interference in my constitutional duty to prosecute without fear, favour or prejudice.
50. It is most likely that I would have clarified my position with the Minister, either through a meeting or a telephone discussion. I would have confirmed to the Minister that it was not my intention to drop the TRC cases.
51. I decided to prepare a detailed memorandum for the Minister to set out the history behind the policy to the TRC cases and to inform the Minister of the

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problems experienced in implementing this policy. This memorandum is titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' and was dated 15 February 2007. This memorandum was annexed to my affidavit before the Ginwala Commission marked as "TRC1".

52. In this memorandum I concluded that there had been improper interference in relation to the TRC cases 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.

53. As I had marked this memorandum as an "internal secret memorandum" I have not attached it to this affidavit. I have attached it to an *in camera* affidavit which will be filed separately and which will not be made available to the public, unless this honorable Court authorizes such release. In this regard I make the following submissions:

53.1. The issues and complaints raised in the memorandum have already been discussed in the body of my affidavit filed before the Ginwala Commission, which has been part of the public record

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since 7 May 2008. and which was also part of the court record in the matter of *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (TPD case no 32709/07).

- 53.2. In my view, there is nothing in the memorandum that implicates or impairs national security.
- 53.3. Since the memorandum points to unlawful and unconstitutional conduct it would be in the public interest for this memorandum to be released
- 53.4. The public interest in the disclosure of the memorandum far outweighs any possible contemplated harm, inconvenience or embarrassment.
54. I never received any response from the Minister to this memorandum. Given the serious issues I was raising in the memorandum, and given that the NPA Act criminalizes obstruction of the work of the prosecuting authority, I would have expected an immediate response from the Minister. 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.

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55. During the course of the next few months the legal representative of Messrs. Otto, Smith and van Staden, Vlok and van der Merwe, held detailed negotiations with Advocate Ackermann and members of the PCLU in regard to a plea and sentencing agreement.
56. The negotiation of the plea and sentencing agreements with the five accused was an extended process and was only concluded in early July 2007. On 10 July 2007 I sent a memorandum to the Minister informing her of the fact that the prosecution had been set down for hearing on 17 August 2007 and that all accused had indicated their intention to plead guilty to a charge of attempting to murder Reverend Chikane by means of poisoning. The memorandum informed her of the fact that plea and sentencing agreements had been entered into. To the best of my recollection the Minister did not respond to this memorandum.
57. On or about 10 July 2007 I went off on compassionate leave because of the illness and subsequent death of my mother. In my absence, on 17 July 2007, Dr Ramaite and Advocate Ackermann were summoned to a meeting with the Minister and reported to her on these developments.
58. In August 2007, those implicated in the Chikane case pleaded guilty to the charges in exchange for suspended sentences as per Section 105A of the Criminal Procedure Act, 1977. Vlok and Van der Merwe were sentenced to

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ten years in prison suspended for five years, while the other three received five year prison sentences, suspended for five years.

59. I would have preferred a full prosecution in this case because Adriaan Vlok and Johan van der Merwe only made limited disclosure. They largely confined their disclosure to facts that were already in the public domain. They declined to disclose detailed information in relation to the compiling of the hit list and who was behind such compilation. They did not reveal the other names on the list; the *modus operandi* of the other hits or the identities of the other masterminds and perpetrators.

60. A full prosecution in the Chikane case would have produced greater truth and accountability. However there was strong political resistance to this prosecution and the pursuit of the other political cases. It was clear to me that the government, and in particular the then Minister of Justice, did not want the NPA to prosecute those implicated in the Chikane case. This was due to their fear of opening the door to prosecutions of ANC members, including government officials. Moreover I could not rely on the police to investigate this case, and the other political cases, thoroughly. Therefore, a plea and sentence bargain was in my view the most appropriate compromise in the circumstances.

61. Shortly after the plea and sentence agreement had been confirmed in court

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a newspaper article appeared in the Rapport newspaper of 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. The claim was made on the basis of a fabricated document. A copy of this newspaper article is annexed hereto marked "VPP4". The NPA responded to this article by way of a press statement dated 21 August 2007 in which the allegations made in the Rapport article were denied. A copy of this press statement is annexed hereto marked "VPP5".

62. After the newspaper article was published, I was summoned to a meeting of the of the subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on Post TRC matters, which was held on 23 August 2007. This meeting was attended by several cabinet ministers, directors-general and Mr. Selebi. Cabinet Ministers included the Minister for National Intelligence Services, Mr. Ronnie Kasrils, Minister Mabandla, Minister Skweylya amongst others.

63. During the meeting, Mr. Selebi said to me that the *'gloves are now off'* and that he was *'declaring war'* on me. In response I told him: *"for once in your life can you tell the truth and shame the devil"*.

64. Those at the meeting demanded answers from me about TRC prosecutions. They were also particularly concerned that I was instituting an investigation into certain members of the South African Police Service.

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This was in relation to my investigation into who was behind the fabrication of the letter purportedly written by Ackermann SC. Minister Mabandla told me to stop this investigation as we could not be seen to be taking each other to court. I advised the Minister that I would not stop the investigation.

65. I explained that:

65.1. the NPA was bound by law to continue with prosecutions of individuals who did not apply for or who were refused amnesty.

65.2. the NPA was actively preparing for those prosecutions and that we should not be stopped from doing our job.

65.3. It was my role as the NDPP to decide who would be charged.

66. On 28 August 2007 I received a faxed letter from the Minister of Justice, Ms. B S Mabandla. A copy of this letter is annexed hereto marked "VPP6". She referred to the meeting held on 23 August 2007. She noted that the National Commissioner of Police and I had different views on the Rapport article regarding the alleged forgery of certain NPA documents. She noted that I had initiated an investigation into the alleged forgery but she complained that she had not been advised of this decision or the basis thereof. Paragraphs 4 and 5 of the Minister's letter are particularly

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revealing:

4. In the course of the discussion, it became clear that Mr. J Selebi was of the view that there is no truth in the Rapport article, and he produced documents to support his argument that indeed there is an investigation by the NPA on certain political office bearers.

5. It was suggested at the meeting then that it would be useful if you could respond to the allegation that there is an investigation as mentioned above. (Emphasis added).

67. The Minister's letter was further indication of the view held at ministerial level that I should not enjoy actual discretion to make prosecutorial decisions in relation to the so-called political cases arising from the conflicts of the past.

68. I responded to the Minister's letter by way of a letter dated 29 August 2007, a copy of which is annexed hereto marked "VPP7". My copy of this letter is not on an NPA letterhead, but I confirm that the contents thereof were transmitted to the Minister.

69. In this letter I referred to the 23 August 2007 meeting:

"...which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members."

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70. I confirmed that there was no investigation by the NPA "against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police".

71. In relation to paragraph 4 of the Minister's letter I noted that it is:

"...clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored."

72. I reminded the Minister that my predecessor had satisfied himself that there was no basis for the leadership of the ANC to be investigated and he had then briefed the then Minister of Justice, as well as the President. I also advised the Minister that all the dockets relating to the TRC cases, which had been stored at the Office of the Director of Public Prosecutions (DPP) in Pretoria, had been handed over to the SAPS in early and mid-2004. In my capacity as then DG of Justice I was actually present in the office of the DPP when representatives from the SAPS collected the said dockets.

73. I concluded my letter by requesting an urgent meeting with the Minister and myself and my Deputies. I also requested an opportunity to appear before the National Security Council "to give a true account of this issue".

74. The Minister did not respond to my requests and these meetings never

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took place. On 23 September 2007 I was suspended from office by President Mbeki. Shortly after my suspension I learned that Advocate Ackermann had been relieved of his duties in relation to the TRC cases.


CONCLUSION

75. I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me. It is no coincidence that there has not been a single prosecution of any TRC matter since my suspension and the removal of the TRC cases from Advocate Ackermann.
76. The political interference or meddling that I have set out in this affidavit is deeply offensive to the rule of law and any notion of independent prosecutions under the Constitution. It explains why the TRC cases have not been pursued. It also explains why the disappearance and murder of Nokuthula Simelane was never investigated with any vigour and why the pleas of her family and her representatives were ignored.

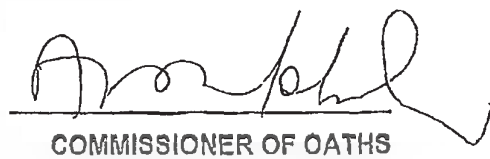


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I hereby certify that the deponent has acknowledge that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at CAPE TOWN on this the 6th day of MAY 2017 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Andrew Lehloyo Darcky Mohohlo
 Commissioner of Oaths
 Practising Attorney
 2nd Floor, Leadership House, 40 Shortmarket Str
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STATEMENT BY PRESIDENT THABO MBEKI TO THE NATIONAL HOUSES OF PARLIAMENT AND THE NATION, ON THE OCCASION OF THE TABLING OF THE REPORT OF THE TRUTH AND RECONCILIATION COMMISSION; CAPE TOWN, APRIL 15, 2003.

- Madame Speaker and Deputy Speaker;
- Chairperson and Deputy Chairperson of the Council of Provinces;
- Deputy President;
- Chief Justice and Members of the Judiciary;
- Former Members of the Truth and Reconciliation Commission;
- Ministers and Deputy Ministers;
- Distinguished Premiers;
- Honoured Traditional Leaders;
- Leaders of the Chapter Nine Institutions;
- Honourable Leaders of our Political Parties;
- Your Excellencies, Ambassadors and High Commissioners;
- Honourable Members;
- Distinguished Guests;
- Fellow South Africans:

We have convened today as the elected representatives of the people of South Africa to reflect on the work of the Truth and Reconciliation Commission, to examine its Recommendations and to find answers, in practical terms, to the question - where to from here!

We wish to acknowledge the presence of Commissioners of the erstwhile TRC, who took time off their busy schedules to join us in commending the Report to our national parliament.

I am confident that I speak on behalf of all Honourable Members when I say to these Commissioners, and through them, to Archbishop Desmond Tutu and the other Commissioners not present here today, that South Africa sincerely appreciates the work that they have done. Our thanks also go to the staff of the Commission and all who contributed to the success of the work of the TRC, which we are justified to celebrate today.

They did everything humanly possible to realise the objectives of a process novel in its conception, harrowing in its execution and, in many respects, thankless in balancing expectation and reality. Our assessment of the TRC's success cannot therefore be based on whether it has brought contrition and forgiveness, or whether at the end of its work, it handed us a united and reconciled society. For this was not its mandate. What the TRC set out to do, and has undoubtedly achieved, is to offer us the signposts in the Long March to these ideals.

What it was required to do and has accomplished, was to flag the dangers that can beset a state not premised on popular legitimacy and the confidence of its citizens, and the ills that would befall any society founded on prejudice and a belief in a "master race".

The extent to which the TRC could identify and pursue priority cases; its ability to bring to its hearings all relevant actors; the attention that it could pay to civil society's role in buttressing an illegitimate and illegal state; and the TRC's investigative capacity to pursue difficult issues with regard to which the actors had decided to spurn its call for co-operation - all these weaknesses were those of society and not the TRC as such.

And, we make bold to say that all these complexities make the product of the work of the TRC that much more outstanding and impressive.

The pain and the agony that characterised the conflict among South Africans over the decades, so vividly relived in many hearings of the Commission, planted the seed of hope - of a future bright in its humanity and its sense of caring.

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It is a future whose realisation gave life to the passion for the liberation of our people, of Oliver Tambo and Chris Hanl, the tenth anniversary of whose passing away we mark this month. This includes others such as Robert Mangaliso Sobukwe and Steve Bantu Biko, who passed away 25 years ago this year and last year respectively. They joined and have since been joined by many other patriots to whom freedom meant life itself.

We are indebted to all of them; and we shall work to ensure that their memory lives on in the minds of generations to come, inspired by our common determination that never again should one South African oppress another.

At a critical moment in our history, as a people, we came to the conclusion that we must, together, end the killing. We took a deliberate decision that a violent conflict was neither in the interest of our country nor would it solve our problems.

Together, we decided that in the search for a solution to our problems, nobody should be demonised or excluded. We agreed that everybody should become part of the solution, whatever they might have done and represented in the past. This related both to negotiating the future of our country and working to build the new South Africa we had all negotiated.

We agreed that we would not have any war crimes tribunals or take to the road of revenge and retribution.

When Chris Hanl, a great hero of our people was murdered, even as our country was still governed by a white minority regime, we who represented the oppressed majority, said let those who remained in positions of authority in our country carry out their responsibility to bring those who had murdered him to book. We called on our people neither to take the law into their hands nor to mete out blind vengeance against those they knew as the beneficiaries of apartheid oppression.

We imposed a heavy burden particularly on the millions who had been the victims of this oppression to let bygones be bygones. We said to them – do not covet the material wealth of those who benefited from your oppression and exploitation, even as you remain poor.

We walked among their ranks saying that none among them should predicate a better future for themselves on the basis of the impoverishment of those who had prospered at their expense. We said to them that on the day of liberation, there would be no looting. There would be celebrations and no chaos.

We said that as the majority, we had a responsibility to make our day of liberation an unforgettable moment of joy, with none condemned to remember it forever as a day of bitter tears.

We said to our people that they should honour the traditions they had built and entrenched over centuries, never to hate people because of their colour or race, always to value all human beings, and never to turn their backs on the deeply-entrenched sentiment informed by the spirit of ubuntu, to forgive, understanding that the harm done yesterday cannot be undone today by a resolve to harm another.

We reminded the masses of our people of the values their movement for national liberation had upheld throughout a turbulent century, of everything they had done to defend both this movement and its values, of their obligation never to betray this noble heritage. Our people heeded all these calls.

By reason of the generosity and the big hearts of the masses of our people, all of us have been able to sleep in peace, knowing that there will be no riots in our streets. Because these conscious masses know what they are about, the Truth and Reconciliation Commission was able to do its work enjoying the cooperation of those who for ages had upheld the vision of a united humanity, in which each would be one's brother and sister. These are an heroic people whose greatest reward is the liberation of their country.

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Of them, the TRC says: "Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle... Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness... Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures... The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."

Some of these, who had to go through the torture chambers of the apartheid regime to bring us our liberty, are with us in this chamber today. There are others who sit on the balcony as visitors, who lost their loved ones whom they pride as liberators, and others who also suffered from repression.

Surely, all of us must feel a sense of humility in the face of such selfless heroism and attachment to principle and morality, the assertion of the nobility of the human spirit that would be demeaned, denied and degraded by any suggestion that these heroes and heroines are but mere 'victims', who must receive a cash reward for being simply and deeply human.

I know there are some in this House who do not understand the meaning of what I have just said. They think I have said what I have said to avoid the payment of reparations to those whom the TRC has identified as 'victims', within the meaning of the law.

Indeed, the TRC itself makes the gratuitous comment (para 16, p 163, Vol 6) that: "Today, when the government is spending so substantial a portion of its budget on submarines and other military equipment, it is unconvincing to argue that it is too financially strapped to meet this minimal (reparations) commitment."

Apart from anything else, the government has never presented such an argument. It is difficult to understand why the Commission decided to make such a statement.

Elsewhere in Vol 6, the Rev Frank Chikane, Director General in the Presidency and former General Secretary of the South African Council of Churches, is falsely reported as having made a presentation to the Amnesty Committee, which he never did.

He is then said to have told this Committee that he had participated in killing people. We do not understand how this grave and insulting falsification found its way into the Report of the TRC. We are pleased to report that Archbishop Tutu has written to Rev Chikane to apologise for this inexplicable account.

The poet, Mongane Wally Serote teaches us: 'to every birth its blood'. And so, today we acknowledge the pain that attended the struggle to give birth to the new life that South Africa has started to enjoy. In this era of increased geopolitical tension, we dare celebrate as South Africans that we found home-grown solutions that set us on a course of reconstruction and development, nation-building, reconciliation and peace among ourselves.

At this time, when great uncertainty about the future of our common world envelops the globe, we dare stand on mountain-tops to proclaim our humble contribution to the efforts of humanity to build a stable, humane and safer South Africa, and by extension, a more stable, more humane and safer world.

Honourable Members;

If we should find correct answers to the question, where to from here, we will need to remind ourselves of the objectives of the TRC from its very inception, so aptly captured in the preamble to the Promotion of National Unity and Reconciliation Act:

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"...the Constitution of the Republic of South Africa, 1993 provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;

"...the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;

"...It is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

"...the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation".

I am certain that we are all at one that the pursuit of national unity, the well-being of all South African citizens and peace, require reconciliation among the people of South Africa and the reconstruction of our society.

These are the larger and fundamental objectives that should inform all of us as we work to give birth to the new South Africa. The occasion of the receipt of the Report of the TRC should give us an opportunity to reflect on these matters.

Both singly and collectively, we should answer the question how far we have progressed in the last nine years towards the achievement of the goals of national unity, national reconciliation and national reconstruction. Both singly and collectively, we have to answer the question, what have we contributed to the realisation of these goals.

These larger questions, which stand at the heart of what our country will be, did not fall within the mandate of the Truth and Reconciliation Commission. The TRC was therefore but an important contributor to the achievement of the larger whole, occupying an important sector within the larger process of the building of a new South Africa.

As stated in the Act, the TRC had to help us to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights occurred, and to make the findings known in order to prevent a repetition of such acts in future.

It had to help us to promote understanding and avoid vengeance, to extend reparation to those who had been harmed and discourage retaliation, to rely on the spirit of ubuntu as a deterrent against victimisation.

The TRC has done its work as was required. As stipulated in the TRC Act, we are here to make various recommendations to our national parliament, arising out of the work of the TRC.

As the Honourable Members are aware, there is a specific requirement in the law that parliament should consider and take decisions on matters relating particularly to reparations. It would then be the task of the Executive to implement these decisions.

The law also provides that the national legislature may also make recommendations to the Executive on other matters arising out of the TRC process, as it may deem fit.

Let us now turn to some of the major specific details that the TRC enjoins us to address.

The first of these is the matter of reparations.

First of all, an integrated and comprehensive response to the TRC Report should be about the continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social programmes, improving citizens' safety and security and contributing to the building of a humane and just world order.

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The TRC also argues for systematic programmes to project the symbolism of struggle and the ideal of freedom. This relates to such matters as academic and informal records of history, remaking of cultural and art forms, erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names. The government accepts these recommendations.

Special emphasis will continue to be paid to rehabilitation of communities that were subjected to intense acts of violence and destruction. Experience gained with the projects in Katorus in Gauteng and Mpumalanga in KwaZulu/Natal demonstrates that great progress can be made in partnership between communities and government.

Further, with regard to specific cases of individual victims identified by the TRC Act, government has put in place and will intensify programmes pertaining to medical benefits, educational assistance and provision of housing and so on. From time to time, Ministers have elaborated and will continue to expatiate on the implementation of these and other related programmes.

The TRC has reported that about 22 000 individuals or surviving families appeared before the Commission. Of these, about 19 000 required urgent reparations, and virtually all of them, where the necessary information was available, were attended to as proposed by the TRC with regard to interim reparations.

With regard to final reparations, government will provide a once-off grant of R30 000 to those individuals or survivors designated by the TRC. This is over and above other material commitments that we have already mentioned.

We intend to process these payments as a matter of urgency, during the current financial year. Combined with community reparations, and assistance through opportunities and services we have referred to earlier, we hope that these disbursements will help acknowledge the suffering that these individuals experienced, and offer some relief.

We do so with some apprehension, for as the TRC itself has underlined, no one can attach monetary value to life and suffering. Nor can an argument be sustained that the efforts of millions of South Africans to liberate themselves, were for monetary gain. We are convinced that, to the millions who spared neither life nor limb in struggle, there is no bigger prize than freedom itself, and a continuing struggle to build a better life for all.

The second of the specific details in the TRC recommendations pertains to the issue of amnesty. A critical trade-off contained in the TRC process was between "normal" judicial processes on the one hand, and establishment of the truth, reparations and amnesty on the other.

Besides the imperatives of managing the transition, an important consideration that had to be addressed when the TRC was set up, was the extent to which the new democratic state could pursue legal cases against perpetrators of human rights violations, given the resources that would have to be allocated to this, the complexities of establishing the facts beyond reasonable doubt, the time it would take to deal with all the cases, as well as the bitterness and instability that such a process would wreak on society.

The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty - in instances where perpetrators had provided the true facts about particular incidents - and restorative justice which would be effected in the form of reparations. Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter?

Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past,

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but also in the creation of a new ethos within our society.

Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases; and this was not to be.

This reality cannot be avoided.

Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations.

We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing.

However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.

This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts.

It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity.

This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts.

Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action.

Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard.

We shall also endeavour to explain South Africa's approach on these matters to sister-governments across the world. Our response to any judicial matters from these countries will be handled in this spirit and through the legal system. In this regard, we wish to reiterate our call to governments that continue to do so, that the mistreatment of former anti-apartheid fighters, based on the legal definitions of an illegal regime characterised by the United Nations as a crime against humanity, should cease.

In the recent past, the issue of litigation and civil suits against corporations that benefited from the apartheid system has sharply arisen. In this regard, we wish to reiterate that the South African Government is not and will not be party to such litigation.

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In addition, we consider it completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country and the observance of the perspective contained in our constitution of the promotion of national reconciliation.

While Government recognises the right of citizens to institute legal action, its own approach is informed by the desire to involve all South Africans, including corporate citizens, in a co-operative and voluntary partnership to reconstruct and develop South African society. Accordingly, we do not believe that it would be correct for us to impose the once-off wealth tax on corporations proposed by the TRC.

Consultations are continuing with the business community to examine additional ways in which they can contribute to the task of the reconstruction and development of our society, proceeding from the premise that this is in their own self-interest. In addition to intensifying work with regard to such tasks as poverty eradication, and programmes such as Black Economic Empowerment, encouraging better individual corporate social responsibility projects, implementation of equity legislation and the Skills Training Levy, we intend to improve the work of the Business Trust.

In this context, we must emphasise that our response to the TRC has to be integrated within the totality of the enormous effort in which we are engaged, to ensure the fundamental social transformation of our country. This requires that at all times, we attain the necessary balance among the various goals we have to pursue.

The TRC also recommends that what it describes as the beneficiaries of apartheid should also make contributions to a reparation fund. The government believes that all South Africans should make such contributions. In the pursuit of the goal of a non-racial society, in which all South Africans would be inspired by a common patriotism, we believe that we should begin to learn to work together, united to address the common national challenges, such as responding to the consequences of the gross violations of human rights of which the TRC was seized.

In this regard, I am certain that members of our government will be among the first to make their contributions to the reparation fund, despite the fact that they stood on one side of the barricades as we engaged in struggle to end the apartheid system.

Many in our country have called for a National Day of Prayer and Traditional Sacrifice to pay tribute to those who sacrificed their lives and suffered during the difficult period of oppression and repression whose legacy remains with us. The government accepts this suggestion and will consult as widely as possible to determine the date and form of such prayer and traditional sacrifice. This is consistent with and would be an appropriate response to the proposals made by the TRC for conferences to heal the memory and honour those who were executed.

We shall also continue to work in partnership with countries of the sub-continent, jointly to take part in the massive reconstruction and development effort that SADC has identified as critical to building a better life for all. The peoples of Southern Africa, including the majority in South Africa endured untold privations and were subjected to destabilisation and destruction of property and infrastructure. They all deserve the speeding up of programmes of integration, reconstruction and development that governments of the region have agreed upon.

Madame Speaker;
The Truth and Reconciliation Commission has made many detailed observations and recommendations on structures and systems, which will be dealt with by relevant Ministers and Departments.

For the purpose of reparations, the government has already established the President's Fund, which is now operational, and has, as we earlier indicated, successfully dealt with the matter of urgent reparations. Like the TRC, we do hope that citizens from all sectors will find it within themselves to

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make a contribution to this Fund. Most of the resources that have been allocated for individual and community reparations that we referred to above will be sourced from this Fund, over and above the normal work of the relevant Departments.

We concur with the TRC that intensive work should be undertaken on the matter of monuments as well as geographic and place names. A Trust with the requisite infrastructure, headed by Mongane Wally Serote has been set up to implement the main project in this regard, which is the construction of the Freedom Park whose constituent parts are the Memorial, the Garden of Remembrance and the Museum. This should start by the tenth anniversary of freedom in 2004.

The National Directorate of Public Prosecutions and relevant Departments will be requested to deal with matters relating to people who were unaccounted for, post mortem records and policy with regard to burials of unidentified persons. We would like to encourage all persons who might have any knowledge of people still unaccounted for to approach the National Directorate of Public Prosecutions, the South African Police Service and other relevant departments.

The Department of Justice and Constitutional Development will monitor the implementation of all these programmes, and it will report to Cabinet on an on-going basis.

What we have identified today, arising out of the report of the TRC, forms part of the panoply of programmes that define the first steps in a journey that has truly begun. South African society is changing for the better. The tide has turned and the people's contract for a better tomorrow is taking shape.

The goals we defined for ourselves a decade ago, as we adopted the Interim Constitution, to pursue national unity, to secure peace and the well-being of all South African citizens, to achieve national reconciliation and the reconstruction of our society, have not fully been realised, despite the progress we have made.

The situation we face demands that none of us should succumb to the false comfort that now we live in a normal society that has overcome the legacy of the past, and which permits us to consider our social tasks as mere business as usual.

Rather, it demands that we continue to be inspired by the determination and vision that enabled us to achieve the transition from apartheid rule to a democratic order in the manner that we did. It demands that we act together as one people to address what are truly national tasks.

We have to ask ourselves and honestly answer simple questions.

Have we succeeded to create a non-racial society? The answer to this question is no!

Have we succeeded to build a non-sexist society? The answer to that question is no!

Have we succeeded to eradicate poverty? Once more the answer to that question is no!

Have we succeeded fully to address the needs of the most vulnerable in our society, the children, the youth, people with disabilities and the elderly? Once again the answer to this question is no!

Without all this, it is impossible for us to claim that we have met our goals of national reconciliation and reconstruction and development. It is not possible for us to make the assertion that we have secured the well-being of all South African citizens.

The road we have travelled and the advances we have made convey the firm message that we are moving towards the accomplishment of the objectives we set ourselves. They tell us that, in the end, however long the road we still have to travel, we will win.

In the larger sense, we were all victims of the system of apartheid, both black and white. Some among us suffered because of oppression, exploitation, repression and exclusion. Others among us suffered because we were imprisoned behind prison walls of fear, paralysed by inhuman beliefs in our racial superiority, and called upon to despise and abuse other human beings. Those who do such things cannot but diminish their own humanity.

To be true to ourselves as human beings demands that we act together to overcome the legacy of this common and terrible past. It demands that we do indeed enter into a people's contract for a better tomorrow.

Together we must confront the challenge of steering through a complex transition that demands that we manage the historical fault-lines, without papering over the cracks, moved by a new and common patriotism.

It says to all of us that we must honour those who shed their blood so that we can sit together in this Chamber by doing all the things that will make it possible for us to say, this South Africa that we have rebuilt together, truly belongs to all who live in it.

I am honoured to commend the Report of the Truth and Reconciliation Commission to our National Houses of Parliament and the nation.

Thank you.



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MINISTRY OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
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Adv Vusi Pikoli
National Director of Public Prosecutions
Private Bag X752
PRETORIA
0001

8 February 2007

Dear Adv Pikoli

RE: TRC MATTERS

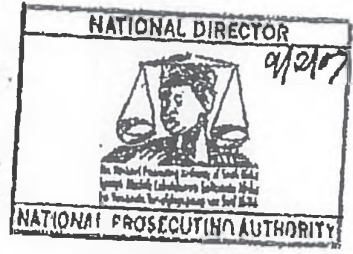
Our discussion in the above matter on Tuesday 6 February 2007 refers.

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.

I trust that you find the above in order.

With warm regards

MRS B S MABANDLA
MINISTER



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Cops up for apartheid crimes

http://www.news24.com/SouthAfrica/News/Cops-up-for-apartheid...

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Cops up for apartheid crimes

2007-02-07 07:15

Jan-Jan Joubert and Willem Jordaan

Capa Town - The national prosecuting authority (NPA) has informed three security policemen that they are to be prosecuted for apartheid crimes.

These will be the first prosecutions since the Truth and Reconciliation Commission (TRC).

The case is related to attempts to poison the Rev Frank Chikane, who is now the director-general of the presidency.

Beeld has the names of the three security police officers and has established that they have been informed by their legal representative that the NPA intends to go ahead with prosecutions.

The move paves the way for prosecution of former minister of law and order Adriaan Vlok and former chief of police General Johan van der Merwe, who are both fully aware of, and prepared for, what will follow, according to sources.

Address to the nation

The NPA did not want to confirm or deny that the prosecutions were to begin.

In political circles, speculation is rife that the planned prosecutions could open a hornet's nest in the week of President Thabo Mbeki's address to the nation.

The question of prosecuting apartheid-era crimes is politically loaded, as some believe that they're necessary to conclude the TRC process, while others feel they could destroy reconciliation.

It appears that members of the latter group could use high-level political pressure to try to prevent prosecutions.

In terms of policy and the constitution, the decision to prosecute lies with the national director of prosecutions, advocate Vusi Pikoli, and not with the government.

Questions already have been asked in high circles about the equanimity of the NPA, and if well-known African National Congress figures who did not get amnesty, would be prosecuted.

One of the ANC members whose amnesty application was turned down was Thabo Mbeki, who applied with a number of other ANC members.

Vlok was in the news recently when he washed Chikane's feet to atone for the attempt to poison him while he was general secretary of the South African Council of Churches.

The three security policemen were connected to the same plot to kill Chikane.

Vlok's step was lauded last year by Mbeki, who added that South Africans should learn to listen more closely to each other across the boundaries of apartheid.

Vlok did not want to respond to rumours that he could be prosecuted. Van der Merwe also remained silent.

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Handwritten notes: 'V.P.' with an arrow pointing to the text above, 'LC', and 'NGI'.

Cops-up-for-apartheid... <http://www.news24.com/SouthAfrica/News/Cops-up-for-apartheid...>

John Wegener, legal representative of the three security policemen, said the NPA informed him of their decision at the end of last month.

He did not want to comment on any particulars.

The latest events follow the tabling in parliament last January of a new prosecution policy on apartheid crimes, among other things.

The victim has a say

It includes a clause that gives the NPA discretion on whether or not to prosecute, if it is not in "the national interest".

One of the factors that must be taken into account is whether the apartheid victim wants the prosecution to go ahead.

In Chikane's case, he has indicated that he is not interested in prosecution, but that he wants full disclosure on the attempt on his life.

He has also indicated that the government is not interested in time-consuming prosecutions.

The NPA has indicated, nevertheless, that prosecution will go ahead.

Beeld

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Dossiere oor leiers se vergrype lê al jare in kluis ANC-lêers 'verdwyn'

Sonja CarstensPretoria

Die polisie het nog niks gedoen om meer bewyse en getuïenis te kry vir die moontlike vervolging van 37 destydse leiers van die ANC aan wie amnestie vir apartheidsmisdade geweer is nie.

Rapport het die afgelope week uit onberispelike bronne verneem die polisdossiere wat twee afgetrede polisielede vroeër saamgestel het, is al jare toegesluit by die hoofkantoor van die polisie se speurdienste. Die bronne se name word op versoek verswyg weens die sensitiewe poste wat hulle beklee.

Volgens die bronne is geen verdere ondersoekwerk na die inligting in die dossier gedoen nie. Die dossier is vroeër verwyder uit 'n kluis in die kantore van die direkteur van openbare vervolgings (DOV) in Pretoria waar adv. Paul Fick, SC, hoof van die vervolgingspan wat die vermeende Boeremagde aankla, die hoof was van 'n span wat verder ondersoek ingestel het met die oog op moontlike vervolging.

Die nasionale vervolgingsgesag (NV) het die ondersoek jare gelede weggeneem van Fick. Hy wou die afgelope week glad nie op vrae reageer nie.

Rapport verneem sedert dit uit Fick se kantoor verwyder is, is dit toevertrou aan 'n span by die NV wat dit verder moes ondersoek, maar wat welig aan die ondersoek gedoen het.

Hierin is adv. Anton Ackermann, SC, in Junie 2003 aangestel as hoof van 'n eenheid wat onder meer misdade teen die staat moes ondersoek. Ackermann was die aanklaer in die Vlok-Van der Merwe-verhoor.

Genl. Johan van der Merwe, voormalige polisiehoof, het Vrydag gesê "oorgenoeg getuïenis" bestaan teen die ANC-leierskorps oor hul betrokkenheid by die landmynontploffing in 1995 waarin verskeie lede van die Van Eck- en De Necker-gesin gesterf het.

In Junie 2004 het mnr. Sipho Ngwema, destydse woordvoerder van die NV, gesê nie een van die 37 leiers, onder wie pres. Thabo Mbeki, mnr. Jacob Zuma, komm. Jackie Selebi, polisiehoof, mnr. Linda Mti, vorige kommissaris van korrektele diens, en min. Essop Pahad kan vervolgt word nie omdat "daar eenvoudig nie genoeg getuïenis is om 'n klagstaat op te stel nie".

Ngwema het destyds gesê die NV weet nie wêreld wat gedoen of wie die opdragte gegee het nie. "Indien die NV dit met die getuïenis tot sy beskikking sou doen, is dit net so goed die vervolger besluit oudpres. PW Botha of oudpres. FW de Klerk moet teregstaan weens voorvalle in die apartheidsjare waarvoor niemand anders verantwoordelikhed aanvaar het nie," was Ngwema se woorde.

Mnr. Dirk van Eck het reeds aangedui hy is gereed om 'n klag in te dien teen ANC-leiers wat nie amnestie ontvang het nie vir die aanval wat meer as die helfte van sy gesin uitgewis het.

Die politieke omstredenhed oor vervolgings vir misdade uit die verlede sal uitbrel as die NV 'n vervolging instel teen genl. Basle Smit, 'n voormalige hoof van die polisie se speur- en veiligheidstak. Een van die klousules in Vlok en Van der Merwe se pleitooreenkoms dwing hulle om in 'n moontlike verhoor teen Smit te getuig.

Rapport verneem Ackermann het vroeër skriftelk opdrag gegee dat die polisie nog getuïenis in die ondersoek na die ANC-leiers moet versamel met die oog op moontlike vervolging. Maar die afgelope week het die polisie geweer om te sê of die opdrag nagekom is en wat die vordering daarmee is.

Dir. Sally de Beer, Selebi se woordvoerder, het navrae na dlr. Phuti Setati, woordvoerder van nasionale speurdienste, verwys.

"Die polisie wil sy kommentaar oor die saak voorbehou," het Setati gesê.

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) Vlok en Van der Merwe vra Mbeki en De Klerk om in te gryp - bl. 14

Google translate:

Dossiers on leaders' abuses lay for years in safe ANC files' disappear'
Sonja CarstensPretoria

The police have done nothing to get more evidence and testimony for the possible prosecution of 37 former leaders of the ANC who amnesty for apartheid crimes were refused.

Report this week from impeccable sources learned that the police dockets that two retired police officers have made earlier, for years locked up at the headquarters of the police's detective services. The sources' names are withheld at the request because of the sensitive positions that they hold. According to the sources, no further investigation into the information taken in the case files. The dossiers were earlier removed from a safe in the office of the Director of Public Prosecutions (DPP) in Pretoria Advocate. Paul Fick, SC, head of the prosecution team who accuse the alleged Boer force members, the head of a team that further investigation instituted with a view to possible prosecution.

The National Prosecuting Authority (NPA) has taken the examinations years ago Fick. He wanted the past week did not respond at all to questions.

Butchery since it was removed from Fick's office, it was entrusted to a team at the NA that it had investigated further, but that did little to investigations.

After this, Adv. Anton Ackermann, SC, was appointed in June 2003 as head of a unit that had investigated include crimes against the state. Ackermann was the prosecutor in the Vlok Van der Merwe trial.

Gen. Johan van der Merwe, a former police chief, said Friday "ample evidence" exists against the ANC leadership over their involvement in the landmine explosion in 1995 in which several members of the Van Eck- and the Necker family died.

In June 2004, Mr. Sipho Ngwema former spokesperson of the NPA, said none of the 37 leaders, including President. Thabo Mbeki, Mr. Jacob Zuma, Comm. Jackie Selebi, the police chief, Mr. Linda Mti, former commissioner of correctional services, and more. Essop Pahad can be prosecuted because "there is simply not enough evidence for an indictment to prepare,".

Ngwema said then that the NPA do not know who has what or who did not give the orders.

"If the SA would do this with the evidence at its disposal, it is as well the prosecutor decides former president. PW Botha or former president. FW de Klerk arraigned because of incidents in the apartheid years for which no one has accepted responsibility," was Ngwema's words.

Mr. Dirk van Eck has indicated he is ready to file a complaint against ANC leaders not yet received amnesty for the attack that wiped out more than half of his family.

The political controversy over prosecutions for crimes of the past will expand as the NPA a prosecution against Gen. Institute. Basle Smit, a former head of the police detective and security branch. One of the clauses of Vlok and Van der Merwe's plea agreement forcing them into a possible trial to testify against Smith.

Butchery Ackermann had earlier instructed in writing that the police have evidence in the investigation of the ANC leaders have gathered with a view to possible prosecution. But last week, the police refused to say whether the assignment is carried out and the progress it.

Dir. Sally de Beer, Selebi's spokesperson, referred questions to Dir. Phuti RAF spokesman national detective refers.

"The police want his comments on the case reserved," the RAF said.

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) Vlok and Van der Merwe asked Mbeki and De Klerk to intervene - p. 14

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<http://www.gov.za/national-prosecuting-authority-rapport-article-ackermann>

National Prosecuting Authority on Rapport article on A Ackermann

21 Aug 2007

Response to article in rapport

21 August 2007

With reference to the statements attributed to Anton Ackermann SC in the rapport of 19 August 2007, the National Prosecuting Authority (NPA) wishes to place on record the following:

* In May 2004, Bulelani Ngcuka, the then National Director of Public Prosecutions, declined to prosecute the African National Congress (ANC) leadership in connection with the conflicts of the past. A press statement confirming this was released on 15 May 2004.

* Since that press release the National Prosecuting Authority and in particular Ackermann has not directed any further investigation into this matter.

* Subsequent to the media report by the Rapport on 19 August 2007, and on request by the National Prosecuting Authority, the South African Police Service (SAPS) provided a copy of letter purporting to be written by Ackermann on 26 June 2006, to the National Prosecuting Authority. The NPA regards this letter as a forgery and has authorised an immediate investigation into the matter.

Contact person:

Tlali Tlali

Cell: 082 333 3880

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28-AUG-2007 16:49 FROM DEPT OF JUSTICE

TO 0128349329

VPPG P.01/e



MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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Our ref: 2/20
Enq: Adv. M Simlana

Adv V P Pikoll
National Director of Public Prosecutions
Office of the National Director of Public Prosecutions
Private Bag X 752
PRETORIA
0001

Dear Adv Pikoll

MEETING OF THE SUB COMMITTEE OF THE JCPB CABINET COMMITTEE ON
POST TRC MATTERS

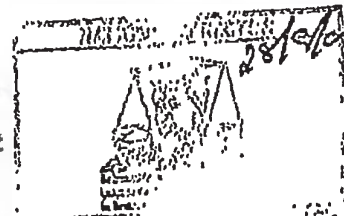
1. I refer to the discussions in the above meeting of 23 August 2007.
2. You will recall that both you and the National Commissioner, Mr. J Selebi, provided the sub-committee with different facts on the Report article regarding an alleged forgery of certain NPA documents.
3. You further confirmed that you have instituted a thorough investigation into the alleged forgery. I was however not advised of this decision and the basis thereof.
4. In the course of the discussion, it became clear that Mr. J Selebi was of the view that there is no truth in the Report article, and he produced documents to support his argument that indeed there is an investigation by the NPA on certain political office bearers.
5. It was suggested at the meeting then that it would be useful if you could respond to the allegation that there is an investigation as mentioned above.

Your urgent response would be highly appreciated. Any information that could shed light to the issues will also be welcome.

I trust that you find this above in order.

Yours sincerely

MS S MABANDLA, MP
Minister for Justice and Constitutional Development
Date: 28.08.07



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Ref: NDPP/kp

Minister B. Mabandla
Minister of Justice and Constitutional Development
Momentum Building
cnr Prinsloo and Pretorius Streets
PRETORIA

29 August 2007

Dear Minister

**MEETING OF THE SUB-COMMITTEE OF THE JCPS CABINET
COMMITTEE ON POST TRC MATTERS**

- 1. I refer to your fax of 28 August 2007
- 2. I refer to the meeting of the sub-committee of 23 August 2007, which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members.
- 3. I confirm that I stand by what I said about the National Commissioner of Police and the South African Police Service (SAPS).
- 4. I confirm and repeat the following:
 - 4.1 That I have instructed that an investigation be carried out in respect of the forgery of the memo by Adv. Ackermann SC.
 - 4.2 As borne by the attached annexure and the numerous communications to the Minister, there is no investigation by the NPA or any of its officials against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police, I give the

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Minister the assurance that no investigations or decisions to prosecute in these matters are done without my express authorization as per the prosecution guidelines as they pertain to the post TRC matters.

5. While I am not certain as to what the meaning of paragraph 4 of your letter is, it is, however, clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored.
6. Arising from allegations made by two police officers, as well as a threat by a lawyer representing former Security Branch members who were facing prosecution, my predecessor had the material relating to the ANC leadership perused and satisfied himself that there was no basis for the leadership to be investigated. He also briefed your predecessor, as well as members of the Office of the Presidency to this effect. In my presence and in my capacity as the then Director General of the Department of Justice & Constitutional Development, all the police dockets stored at the Office of the Director of Prosecutions: Pretoria were handed over to the police. These events all took place in early and mid-2004. I confirm as well that the Minister was made aware of all these facts as far back as December 2004 and I am surprised that this issue is now resurfacing.
7. In view of all that is transpiring now, I request an urgent meeting with the Minister, my Deputies and myself. Further, I request an opportunity to appear before the National Security Council to give a true account of this issue.

Kind regards

Adv. VP Pikoli
National Director of Public Prosecutions
Date:

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