JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATIONS OR PROSECUTIONS OF TRUTH AND RECONCILIATION COMMISSION CASES

AFFIDAVIT

I, the undersigned,

FRANK CHIKANE

do hereby make oath and state as follows:

1. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.

2. I am currently an Emeritus Pastor of the Apostolic Faith Mission of South Africa (AFM); a Chair of the South African Chapter of the Anti-Apartheid Movement (AAM) on Palestine; a Co-Convener of the African and African Diaspora (AAD) Conference; and a visiting Adjunct Professor in the Wits School of Governance, University of the Witwatersrand.

3. I am a former international President of the AFM; a former Moderator of the Churches Commission on International Affairs (CCIA) of the World Council of Churches (WCC); a former member of the All Africa

Conference of Churches (AACC) Advisory Committee on Peace and Security on the African continent; a former General Secretary of the South African Council of Churches (SACC); a former Director of the Institute for Contextual Theology (ICT); a former Commissioner of the first Independent Electoral Commission (IEC) that was responsible for the first democratic elections in 1994; a former member of the National Executive Committee (NEC) of the ANC; and a former Deputy President of the United Democratic Front (UDF).

4. In government, I served as Special Advisor to then Deputy President Thabo Mbeki and Deputy Secretary of Cabinet during President Nelson Mandela's Presidency, and thereafter, when Mr Mbeki became President, as Secretary of the Cabinet and Director-General in the Presidency.

5. I have been informed by the Evidence Leaders that evidence has been led at this Commission on the issue of the prosecution of some of those responsible for poisoning me and some of the concerns I raised about the manner in which the entire prosecution process was handled.

6. I have been requested to make a statement and possibly give evidence on that and certain related matters.

7. At the outset, I hasten to point out the following: Giving evidence or preparing a statement on this issue is deeply painful and in fact traumatising. It requires me to relive what I went through not only as a result of the poisoning but also how the prosecution of some of those who were responsible for poisoning me with the aim of killing me was handled. I need to further record that I have already dealt with many of these matters in my book: *The things that could not be said*.

8. In addition, I perhaps need to point out the following: First, as a result of the decision to prosecute some of the persons who were involved in the poisoning exercise, a plea and sentence agreement was concluded between the State and the Accused. A copy of that agreement is annexed hereto as "A." Second, on account of my dissatisfaction with the approach to the prosecution and the manner in which it was handled, I wrote to the then Minister of Justice setting out my concerns. A copy of my letter is annexed as "B."

9. I will refer to both these issues later in this statement. However, before I do so, I submit that it will be helpful for me to provide the overall backdrop against which the prosecution of the accused took place and the vantage point from which I sketch that backdrop.

10. In this regard, I point out that I was in the advantageous position of viewing the prosecution process from two different perspectives. First, at that time, I was already part of government. So, I was able to view the matter from the perspective of government. Second, in

respect of the offence of which the Accused were eventually prosecuted, I was a victim of a wicked plan to have me murdered. By the grace of God, that plan did not succeed. I survived the attempt. However, as a victim of a crime committed against an activist by perpetrators who acted in defence of an evil system, I expected to be consulted about the plea and sentencing plan, especially about any agreement reached with them and the terms of that agreement. As I detail later, that did not happen in the manner in which it was expected.

11. Be that as it may, my involvement in the two roles that I have identified above, gave me a better, and I dare say sharper, understanding than many others, of the complex and emotive issues that such cases involve. I was also aware of and participated in debates that took place relating to what the TRC process sought to achieve and, when those expectations were eventually not wholly fulfilled, how to nevertheless protect the gains we had made when we sought to transform a racist, autocratic and authoritarian state dedicated to minding the interests of a small minority into a transparent, caring and democratic state that would see to the needs of all its people.

The pre-transition period

12. I submit that for the purpose of putting things in context and perspective, it will be helpful to begin by briefly reflecting on how it came about that the TRC process was brought into being.

13. I was part of those who engaged in debates and workshops about the idea of a 'truth' and 'reconciliation' mechanism to prepare for the time when we will have to create a society where those who fought against each other bitterly would live together in peace. This happened within the church first and then with activists involved in the struggle for liberation. We grappled with the dilemma of 'the need to know' about what happened to victims of the apartheid system (especially where we did not have the evidence) and 'the need to ensure justice was done', on the one hand, and on the other, strategies to cross the bridge from a violent unjust and oppressive system to a just and peaceful society.

14. During the negotiations in the early 1990s, the matter of how to deal with crimes of the past came to the table and debates on some sort of "truth and reconciliation" commission to help us cross the bridge from a violent apartheid society to a just and democratic society were considered. The consensus was that we would never know what had happened to those who were assassinated, killed or who have disappeared without the cooperation of the perpetrators of such acts, because most of these acts were done covertly. Where there was sufficient evidence of gross human rights violations the prosecution authority would prosecute the perpetrators.

15. On the first category of cases a major compromise had to be made by offering amnesty to the perpetrators in return for information or

"truth." The sacrifice that had to be made was that we would not bring the perpetrators to "justice" once they had volunteered to tell the truth. Hence the commission that was set up was ultimately called the Truth and Reconciliations Commission (the TRC).

16. (It is important to point out at this stage that the final TRC Act was not what we wanted to have. One of the key issues that was a major concern was that the TRC Act equalised gross violations of human rights and the response of those who were resisting the violence of the apartheid system against the masses of the people.)

17. Based on the reasoning in (14) above, we began to talk about giving an opportunity to perpetrators of gross violations of human rights to come clean and disclose everything they did or knew in return for amnesty. Anyone who failed to disclose or take advantage of this opportunity would face potential prosecution once evidence became available. We thought that in this way we would motivate the perpetrators to come out of the woodwork. We also expected that once one individual did so, the others would be compelled to follow suit as information from their colleagues would implicate them or make them witnesses. We anticipated that the strategy would have a domino effect and the approach became a key element of the TRC Act.

18. I should perhaps point out that the decision to make compromises arose against the following backdrop. First, our transition to

democracy and a transformed society was going to be through a negotiated settlement, not a "winner take all" war. As a result, it was necessary to assure those in power and the beneficiaries of the old South Africa that, notwithstanding all the wicked deeds that had been committed in the defence of an evil system, the transition would not lead to a period of some type of revenge. The "take" in this regard was that actions by the liberators that would be classified as illegal, in a legal system that the majority saw as inherently unjust, would be similarly protected.

19. The reality though is that many perpetrators of evil did not come forward. In addition, a large number had been denied amnesty as they did not meet the criteria to be granted amnesty.

20. After the TRC process had been finalised, there was an expectation that prosecutions of those who had been denied amnesty or had not applied for amnesty would proceed, as had been recommended by the TRC in its final report. This of course depended on availability of evidence to secure a conviction.

21. Unfortunately, some parts of the TRC recommendations were not acted upon as recommended by the TRC, or in the form in which the TRC recommended, for various reasons. Some would be that Government modified the recommendation (e.g. the quantum of the grant to victims); or the definition of 'victim' who qualified for reparations in terms of the TRC report; or because of failure of the system; or because of the political complexities of the time. My

understanding of the terms of this Commission is that its focus is in the area of 'failures' of the system and the area which I call 'political complexities of the time."

22. As one who was in government during this period (as a special adviser to Deputy President Thabo Mbeki and later as the Director - General in the Deputy President's Office and Deputy Secretary of Cabinet during President Nelson Mandela's Presidency, and, thereafter becoming Director-General in his Office when he became President and Secretary of the Cabinet), I have views about that difficult moment I had to deal with both from my vantage point in government and as a 'victim' who had unfinished business from the TRC processes.

23. In general, at the end of the TRC process most departments of government did not see a role in post-TRC-related matters. Many had new responsibilities to worry about, particularly regarding the transformation of the apartheid state and its institutions and structures.

24. For those whose departments were directly affected, especially the Justice and Security Cluster, they got ceased with the complexities of the issues they had to deal with related to the post TRC matters. I must state that as I was not participating in those Cluster meetings, I would not know about all the issues they dealt with and how they did.

25. The part I got involved in in relation to post-TRC matters as the Director-General in the Presidency and Secretary of Cabinet was in discussions relating to the magnitude of the grant (financial) to victims as defined by the TRC; the cases of people who were denied amnesty in terms of the TRC Act, and those who did not appear at the TRC hearings.

26. On prosecutions, Guidelines were developed to allow a possibility for those who were prepared to disclose what they did to arrange for a plea and sentencing arrangements to dispose of their cases. Affected victims had to be involved and consulted. This is the approach I used in my poisoning case.

27. The political complexities which bedevilled the prosecution of perpetrators of gross violation of human rights related mainly to the need of the old order to protect its commanders and foot soldiers, especially those who were at the forefront of committing these dastardly acts, and the equalisation of violence in support of the apartheid system and armed resistance to end the apartheid system. There were threats that if the Apartheid order operatives were charged, they would also charge, particularly members of the National Executive Committee of the ANC, especially the list of 37 that did not get amnesty in terms of the TRC Act. There was a story

that the old order operatives had files of Minutes of the ANC NEC in exile which they would use to prosecute leaders of the ANC.

28. In the light of Paragraph 26 above and the fact that we ended up with a political settlement, there was a view which was not codified officially, that we should let sleeping dogs lie to avoid destabilisation of the new democratic order. Among those who thought like this, as I have said in my book, *The Things that Could Not Be Said*, there was not much appetite for looking back.

29. It was my observation that some within government and the ruling party felt that we should close the post-TRC matters and do nothing further. They reasoned that by continuing with the prosecution of these matters, we run the risk of destabilising the country. This was based on their appreciation that, while the perpetrators of gross violations of human rights were afraid of being prosecuted, they were themselves preparing to arrange for those on the side of the liberation movement, that is, those who commanded or were involved in MK operations, to be charged as well. In respect of this issue, both those from the old order and those from the new order were in agreement: they wanted to let sleeping dogs lie.

30. Of course, the problem with this position was that there were many South Africans who still saw themselves as victims – rightfully so - and wanted to know what had happened to their next-of-kin who had either disappeared or died mysteriously. There were still people

looking for the bodies of their loved ones or graves or places where they might have been buried or dumped.

31. I must put it on record that I was one of those who wanted to know, in my case about my poisoning. I could not be dispassionate. The reality is that there was unfinished business of the TRC that could not just be swept under the carpet.

32. In respect of the prosecution of perpetrators, in my case those who had poisoned me, some feared that the enthusiasm and urgency with which certain members of the prosecuting authority wanted to arrest and charge the three police officers who had been identified as being involved was part of the strategy to precipitate action against some of the leaders of the new government, especially the 37 whose application for amnesty was turned down. Such a result could be achieved in the name of equality, namely by balancing people to be charged between the perpetrators of gross violations of human rights on the one side of the apartheid regime and ANC leaders who were involved in or who commanded the war of resistance against the apartheid regime, on the other.

33. There was in fact a heated debate between some NPA officials and the command of the police about this matter as there was an indication that some within the NPA were planning to arrange for the arrest of the 37 ANC leaders who had applied in general terms for amnesty and took responsibility for those who acted under their leadership or command. But their application did not fall within the

TRC framework, and on that basis the application was not accepted. One of those whom they were allegedly intending to arrest was then President Thabo Mbeki, for being part of the NEC of the ANC in exile, which was responsible for the MK operations in the country.

34. Some believed that those seeking to have the 37 ANC leaders arrested wanted to create a crisis that would force the ANC leadership to back off from the post TRC-cases that fell under the category of "unfinished business of the TRC". Others wanted to prosecute people for the sake of it without considering the implications thereof, particularly because of the special circumstances of our transition from an unjust racist system to a just and democratic system. There were at the time many conspiracy theories going around.

35. It is against the broad and general backdrop that I have summarised above that I turn now to deal with specific matters relating to the prosecution of those who were involved in my poisoning with an intent to kill.

My efforts to ascertain the facts

36. I need to record that the effects of the poisoning first afflicted me while I was on a trip to Namibia. I was first attended to in Namibia but was flown to South Africa for further treatment. Soon thereafter, I left for the United States on a mission to campaign for comprehensive sanctions against the apartheid regime, where I was again afflicted as a result of using other clothes on which the poison

was administered. It was then that tests were done and the results thereof led to some suspicion that the South African apartheid security police had been responsible for administering the poison to my clothes at the airport in Johannesburg.

37. After I returned to South Africa from the United States, I appealed to the apartheid government and the public in general to trace and identify the perpetrators of the dastardly act. By that time, I had information that there were two to three laboratories in South Africa where the chemicals or biological substances that were used were produce and demanded that these be disclosed. However, although the police took a statement from me, nothing happened.

38. Thereafter, whilst the concept of setting up the TRC was being discussed, I seized on the opportunity to call on and encourage those who were involved in or had information about my poisoning to take a bold step and make disclosure. I indicated that I had no interest in having them prosecuted. What was important was the truth about who had carried out the operation. I took the matter further based on my Christian faith: if they were willing to confess their deeds I was prepared to forgive them.

39. Sadly, I must record, no one came forward except a Paul Erasmus who revealed in a newspaper article that he was responsible for putting me on the death list of the apartheid security police, on the basis of instructions from his seniors. He said he had joined the police when he was about 18 and believed everything he had been

told about black people, including that we were dangerous and that whites had to do everything possible to suppress them. He expressed regret about what he had done. I managed to talk to him over the phone. I assured him that I had forgiven him and that I was prepared to meet with him personally. He had disclosed that he had certain knowledge about my poisoning and about the persons responsible for it. Unfortunately, Paul Erasmus was placed in a witness protection programme, and we could not take this matter further. Nevertheless, I did get some information from the prosecuting authority, some of which would have come from Paul Erasmus.

40. But I would not let the matter rest. In my quest to ascertain details relating to my poisoning, I wrote letters to, among others: former President FW de Klerk, former Minister of Police Adrian Vlok, former Commissioner of Police Johann van der Merwe, former Deputy Minister of Defence Roelf Meyer, former Surgeon-General Niels Knobel and former army chief General Georg Meiring. All denied knowledge about his poisoning. I record that I also wrote to members of the new government. As a result of the various processes I initiated, I gathered enough information to lead me to the police officers who were involved in the actual operation to poison me. I identified them as Christopher Lodewikus Smith, Gert Jacobus Louis Hosea Otto and Hermanus Johannes van Staden.

41. When the TRC Act was passed, providing a legal framework for perpetrators to apply for amnesty based on voluntary disclosure, I repeated my call for information relating to my poisoning, but no one responded. Those who appeared before the TRC to apply for amnesty chose to deny any knowledge of my poisoning, apparently because it would implicate many people at the top echelons of the apartheid security establishment and the political leadership. Nevertheless, some bits and pieces of information helped to strengthen my suspicion that the apartheid security forces were involved in my poisoning.

42. In the meantime, the scientists who were responsible for producing the lethal toxic chemicals and biological substances used in poisoning me responded to my invitation to disclose their involvement. Led by Dr Andre Immelman, they visited me at the Union Buildings and expressed regret for participating in the production of the legal substances that were used against me, and I may add, probably against others as well.

43. Having met the scientists and following the window of opportunity opened up by a statement by the President in Parliament about post-TRC matters, which asked the NDPP to "negotiate indemnity from prosecution in terms of existing law for those who make complete disclosure to the NDPP", I believed that this presented an opportune moment to communicate directly with those who were involved in my poisoning and to appeal to them to disclose their involvement. With

all the information I now had at my disposal, it became clear that the evidence was building up against the perpetrators of this callous act which could lead to their arrest and charges being preferred against them.

44. Thereafter, with the help of the NPA I addressed letters to the three police officers involved asking them to disclose what they knew. I reasoned that I should use the NPA because it was in contact with the lawyers of the perpetrators, and because I did not want them to say that I had threatened them.

45. In May 2003, through the media I wrote an open letter to "fellow South Africans" in which I said that "telling the truth and giving information about what happened to victims and those who disappeared or died during the days of the apartheid system is critical to the process of reconciliation, healing and transition to a democratic society". I also made the point that those who were "still imprisoned by their past deeds should come forward with information so that we may proceed with the building of a new, more humane and peaceful South Africa for all South Africans." In addition, I made public my offer to "waive my rights to sue for damages or seek prosecution" to make it easier for perpetrators who had "failed to take advantage of the TRC process to acknowledge culpability or involvement in apartheid inspired attacks on me."

46. In addition, on several occasions I wrote to the three police officers involved making the same plea. Despite these repeated efforts, I regrettably received no reply from them.

47. However, as more and more evidence was coming to the fore preparations were being made to arrest the three police operatives. It was the imminence of the arrests in the latter part of 2004 that sparked a flurry of activity. Vlok and Van der Merwe entered the fray as they believed in taking responsibility for those who worked under their authority or command. They interacted directly with the NPA on behalf of the three, and when they realised that they were not making progress and time was of the essence, they started a line of communication with me based on my letters and my offer.

48. My position was simple and deeply personal: just disclose to me the story, then use the channel the President announced by presenting the disclosure to the NPA, which would be expected to facilitate a plea bargain arrangement to close the matter. Their concern however was that there was no legal provision or framework for what the President had announced and that it left the perpetrators vulnerable as there was no guarantee that the arrangements with the NPA would not result in the imprisonment. Besides, a plea bargain agreement had to go to court. But this exposed them to the risk that a court could make a different ruling that could also result in the imprisonment.

49. For these reasons, they preferred their original position, which they had presented to the NPA and the political leadership, particularly FW de Klerk and Thabo Mbeki, namely a general amnesty. However, they acknowledged that this was a non-starter as it had been rejected even before the TRC processes.

50. Another concern that they had was that any disclosure by one person about a particular case was likely to implicate others and one could then be forced to be a witness in other cases that may be brought to court. They were worried about exposing or giving evidence against one of their own. One could not miss the point that there must have been a pact between the operatives that they would not sell out any of their own or expose them to risk. This illustrated to me the multiple levels of lying and denial in place. This, in my view, was to ensure that the line of responsibility for such processes as my poisoning was not traced to the Cabinet, including then President P W Botha, who chaired the National Security Council.

51. In the result, as often happens, the sad reality is that it is usually the foot soldiers who are the first targets when information comes to light about specific gross violations of human rights. This was what initially also happened in this case: It was Smith, Otto and Van Staden who were the first targets. Be that as it may, however dastardly my poisoning, I have to respect Vlok and Van der Merwe for not abandoning their foot soldiers, like some of their colleagues did. At a critical moment when the three police officers were at risk, Vlok and

Van Der Merwe came out of the woodwork, took off their masks and moved from their "strategic lies" (to protect themselves and their foot soldiers), to declaring solidarity with their foot soldiers. They admitted what they had denied all along and were prepared to be charged along with their underlings. It is for this reason that they started the negotiations with the NPA, failing which, with myself. This is in stark contrast with the command of the apartheid South African Defence Force, who were directly and primarily responsible for this poisoning project.

52. My discussions with Vlok and Van der Merwe turned into a kind of negotiation process about how Smith, Otto and Van Staden could respond to my call without opening themselves to prosecution. Their lawyer, Jan Wagener, was also involved.

53. However, parallel to these discussions was an on-going dialogue between Vlok, Van der Merwe and Wagener, on the one hand, and the NPA, particularly Advocate Ackermann, who was responsible for the case, on the other. There was also a raging debate between government and the NDPP about a prosecution policy to deal with the unfinished business of the TRC cases (Principles for Prosecution of TRC Related Matters) in line with President Mbeki's speech in Parliament.

54. I have detailed the various steps I took to get to the truth to illustrate how difficult it is to unearth the truth. I turn now to the charges that were preferred against the Accused.

The charges against the Accused

55. The Accused who were indicated were the following: Johannes Velde Van der Merwe; Adrian Johannes Vlok; Christoffel Lodewikus Smith; Gert Jacobus Louis Hosea Otto; and Hermanus Johannes van Staden.

56. As regards the Accused, I need to emphasise the following: Smith, Otto and Van Staden were the "foot soldiers" who were charged together with Van der Merwe and Vlok who chose to be charged together with them.

57. The main charge against the Accused was that of attempted murder. It being alleged that: on or about 23 April 1989 at or near the vicinity of the then Jan Smuts Airport the Accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the Rev Frank Chikane by way of administering a poison, to wit Paraoxon, to his clothing.

58. I need to also record the following. First, that the Accused were charged in the alternative with contravening section 18(2) of the Riotous Act, No 17 of 1968, together with Wouter Basson, Andre Immelman and persons unknown to the State, namely conspiring to kill Reverend Chikane. Second, all these persons also faced a further charge, under Count 2, namely, conspiring to commit the crime of murder of persons unknown to the State.

59. I turn to summarise my interactions with Advocate Ackermann who made what was a difficult and painful process even more painful.

Dealings with Ackermann

60. As regards the prosecution of the Accused, I had several discussions with Advocate Ackermann. I record that I found that his approach was a punitive one and not within the spirit of the post-TRC processes and the President's call, including the muted prosecution principles related to the unfinished business of the TRC. In contrast, Advocate Ackermann's approach was a straightforward prosecution that would make me a witness against the perpetrators.

61. My response was that I was not interested in a prosecution for the sake of a prosecution. I was seeking the truth about my poisoning. In addition, I had pronounced publicity that I had no interest in sending the perpetrators to jail and was ready to forgive them. Moreover, at that stage, they had already disclosed much of what I needed from them through Vlok and Van der Merwe and Vlok had already asked for forgiveness from me. Later he went the extra mile and even washed my feet, on 3 August 2006, and presented me with a New Testament Bible in which he had asked for my forgiveness.

62. The approach set out above, which I conveyed to Advocate Ackermann, seems to have caused him to conclude that I was a hostile witness. He went as far as threatening me with section 205 of the Criminal Procedure Act to force me not only to give evidence

against the Accused but to disclose all the information Vlok and others had given me. This is where our discussion ended. The section 205 threat reminded me of the old apartheid days. It was like putting salt on my wounds. I dared him to try it and see whether or not he would succeed where the apartheid regime had failed.

63. At this stage, a knew I was just a pawn in a bigger scheme of things.

64. The consequences of this breakdown were dire, including factual errors in the plea and sentencing agreement. Views were attributed to me without any supporting affidavit to ensure their accuracy. I have set these out in my letter to Minister Mabandla, in which I noted, among other matters, the following: the NPA officials charged with handling my case were simply the wrong people to deal with post-TRC matters; my case was used to fight battles within the NPA and between the NPA and the Government about the guidelines for dealing with post-TRC cases; Mr Ackermann entered into an acrimonious argument with me about Government's approach to post-TRC cases, which he was radically opposed to; Advocate Ackermann's threat to use section 205 against me; I was not consulted about the Plea Bargain Agreement, although it reflected that I was "satisfied" with the agreement; the agreement contained errors, some quite embarrassing; and matters that ought to have been probed were not probed to gather more information.

65. I also find it necessary to record the following. While my struggle with the NPA was going on, a campaign was launched from other

quarters of government to stop the case without considering my enduring need for a recorded confession, especially an official court record. Besides, there are still too many, mainly whites who doubted that a government that claimed to be Christian, could commit such an inhuman and treacherous act. Many of those who came to confess to me and asked for forgiveness said: they did not know that the government had committed such acts in their name; and that their worst sin was that even when it was made public that the government had committed such inhumane acts, they did not believe it.

66. I felt caught between three parties: those who perpetrated gross human rights violations against me; the NPA officials; and government officials who held conflicting views.

67. Throughout these processes I interacted with the NDPP from time to time. I also sent the letter to the Minister of Justice to raise my concerns at the end of the case. I also kept the President informed about what I was doing without involving him in the matter.

Conclusion

68. I have on numerous occasions noted the trauma that has been caused to me not only by the apartheid state but also by the manner in which the case against the perpetrators of a heinous act against me was dealt with.

PC

69. As a victim of such an act, I submit that I was entitled to be treated with empathy and understanding. After all, I had suffered enough at the hands of my apartheid tormentors.

70. I hope that what I have set out in this statement is taken note of and that other victims of apartheid abuses are not put to a second round of torment.

71. The South Africa that we have created, with all its imperfections, owes all of us at least that. That is a value that members of the security cluster, especially the SAPS and the NPA, must instil in its members.

DEPONENT

I CERTIFY THAT the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at Midrand on this 28th day of April 2026 under compliance with the Regulations contained in Government Notice No. R.1258 dated 21 July 1972 (as amended).

PC

COMMISSIONER OF OATHS

Phathutshedzo Cansly Ramaru
Commissioner of Oaths (RSA)
Practicing Attorney
66 Peter Place, Hurlingham, Sandton

"A"

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IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

CASE NO:

In the matter between:

THE STATE

and

1. JOHANNES VELDE VAN DER MERWE

an adult male South African citizen

2. ADRIAAN JOHANNES VLOK

an adult male South African citizen

3. CHRISTOFFEL LODEWIKUS SMITH

an adult male South African citizen

4. GERT JACOBUS LOUIS HOSEA OTTO

an adult male South African citizen AND

5. HERMANUS JOHANNES VAN STADEN

an adult male South African citizen

(hereafter referred to as the accused)

PLEA AND SENTENCING AGREEMENT IN TERMS OF SECTION 105A OF ACT 51 OF 1977 (AS AMENDED)

LC NGI

PC

THE PLEA AGREEMENT:

A. PARTIES TO THE AGREEMENT:

1. The State is the National Prosecuting Authority of South Africa and represents the complainant

2. There are five accused, namely:

JOHANNES VELDE VAN DER MERWE

ADRIAAN JOHANNES VLOK

CHRISTOFFEL LODEWIKUS SMITH

GERT JACOBUS LOUIS HOSEA OTTO and

HERMANUS JOHANNES VAN STADEN;

B. AUTHORISATION:

3. The prosecutor who represents the Prosecuting Authority in this matter is **Adv AR Ackermann SC**, a Special Director in the Priority Crimes Litigation Unit in the Office of the National Prosecuting Authority, who is duly authorised to enter into this plea agreement on behalf of the State. The relevant authorisation is attached as **Annexure A**.

C. LEGAL REPRESENTATION:

4. At all times during the plea negotiations and these proceedings, the accused have been represented by **Adv Johann Engelbrecht SC** and **Jan Wagener**, of Attorneys Wagener Muller, 833 Church Street, Pretoria, 0001.

D. THE INVESTIGATING OFFICER:

5. The investigating officer was consulted regarding this plea agreement and has indicated that he has no objection to the pleas of guilty as set out in the agreement, or to the proposed sentences.

pc

E. THE COMPLAINANT'S ATTITUDE WITH REGARD TO THE PLEA AGREEMENT:

6. The complainant, **the Reverend Frank Chikane**, has been consulted and has indicated that:

6.1 He does not harbour a grudge against the accused.

6.2 It is extremely important for him to have the true facts surrounding the attempt on his life disclosed.

6.3 He is satisfied with the plea agreement and does not wish to make any further representations in connection with the matter.

F. THE RIGHTS OF THE ACCUSED:

7. Prior to entering into the plea agreement, the accused were duly informed about their constitutional rights..

8. They have been fully informed regarding the rebuttable presumption that they are innocent until guilt has been proved beyond reasonable doubt.

9. They were informed of their right to remain silent.

10. They were also fully informed of their right not to offer self-incriminating testimony.

11. The accused are fully aware of the fact that the Honourable Court is not bound by this plea agreement.

G. THE CHARGES:

12. The accused are charged with the following offences:

COUNT 1: ATTEMPTED MURDER

IN THAT on or about **23 April 1989** and at or in the vicinity of **the then Jan Smuts Airport** in the district of **Kempton Park,** the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the **Reverend Frank Chikane,** an adult male person, by way of **administering** a poison, to wit Paraoxon, to his clothing.

ALTERNATIVE CHARGE TO COUNT 1: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956

PC

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IN THAT the accused, together with **Wouter Basson, André Immelman** and **persons unknown to the State, during April 1989** and at or near **Roodeplaat Research Laboratory and/or Pretoria** in the district of **Pretoria,** unlawfully and intentionally conspired to commit the crime of **murder** against the **Reverend Frank Chikane,** and / or to assist in the commission of this offence and / or to further the commission of the offence.

COUNT 2: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956

IN THAT the accused, **Wouter Basson, André Immelman** and **persons unknown to the State, during 1989** and at or near **Roodeplaat Research Laboratory, Security Branch Headquarters** in the district of **Pretoria and/or other locations unknown to the State,** unlawfully and intentionally conspired to commit the crime of **murder** of **persons unknown to the State** and / or to assist with the commission of such murders and / or to further the commission of such murders.

H. THE PLEA OF THE ACCUSED:

13. The parties to this plea agreement have concurred on the following:

13.1 That all the accused plead guilty to **Count 1,** as set out in the indictment:

COUNT 1: ATTEMPTED MURDER

IN THAT on or about **23 April 1989** and at or in the vicinity of **the then Jan Smuts Airport** in the district of **Kempton Park,** the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the **Reverend Frank Chikane,** an adult male person, by way of **administering a poison, to wit Paraoxon, to his clothing.**

13.2 That the State will withdraw **Count 2** against all the accused.

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1. **FACTUAL SUMMARY OF EVENTS:**

(i) BACKGROUND:

(For the sole and exclusive purpose of this agreement, the accused admit the contents of paragraphs 14 to 23 as set out hereunder, although at the time the relevant offence referred to in **Count 1** was committed, they had no knowledge whatsoever thereof.)

14. During the period 1982 – 1992, the South African Defence Force ran a Top Secret project, namely Project Coast. The primary objective of this project was to develop a defensive and limited offensive chemical and biological warfare capacity.

15. Dr Wouter Basson was the project officer.

16. Due to the sensitivity of the project, front companies were used to conduct research as well as to manufacture and procure substances.

17. The front company Delta G Scientific (Pty) Ltd (hereafter referred to as "Delta G") was responsible for research and manufacture of chemical substances for the project.

18. Roodeplaat Research Laboratory (Pry) Ltd (hereafter referred to as "Roodeplaat") conducted research in the biological sphere and to a lesser extent, also carried out chemical research.

19. Dr A Immelman was a scientist employed as the head of toxicological research at Roodeplaat.

20. Around the mid-1980s, Dr Basson instructed Dr Immelman to, *inter alia*, carry out research on the use of toxic substances against individuals, methods of application and the traceability of such substances following administration. These toxic substances (including Paraoxon) were manufactured at Roodeplaat and some of them were handed over to Dr Basson.

21. In approximately 1987, Dr Basson ordered Dr Immelman to meet clandestinely with representatives of other branches of the Security Forces and to supply them with whatever substances they needed.

22. As a result of this instruction, Dr Immelman had various clandestine meetings with members of the various Security Force components. During these meetings, the needs of particular components were discussed and toxic substances were in fact later supplied to them.

23. In order to keep a record of the toxic substances that were handed over to these outsiders, Dr Immelman maintained a list (attached to the indictment

as **Annexure "A"**) indicating the date of delivery, the name of the substance and the volume / quantity supplied.

(ii) THE ACCUSED:

24. During the period January 1986 to September 1988, accused No 1 was the commanding officer of the SA Police Special Branch. In October 1988, he was promoted to Deputy Commissioner of Police.

25. General Sebastiaan Smit succeeded him as commander of the Security Police and thereafter, accused No 1 had no further involvement with the project.

26. During the period December 1986 to August 1991, accused No 2 was the Minister of Law and Order in the Republic of South Africa.

27. During the period relevant to the indictment, accused 3 to 5 served as police officers attached to the Security Branch.

(iii) THE VICTIM:

28. The Reverend Frank Chikane was an outspoken opponent of apartheid and the policies of the then lawfully elected government. He was, *inter alia*, the secretary-general of the South African Council of Churches and the vice president of the United Democratic Front. It was the stated policy of the latter organisation to propagate and support countrywide unrest and violence for the direct purpose of rendering the country ungovernable.

29. During April / May 1989, Reverend Chikane was planning to visit various foreign countries with a view to propagating the imposition of economic sanctions against South Africa.

30. The first leg of his trip was a visit to South West Africa, now Namibia. He travelled by air from the former Jan Smuts Airport to Windhoek.

31. After dressing on 24 April 1989 in some of the clothes that had been packed in his suitcase, the Reverend Chikane took ill. He was admitted to a hospital in Namibia, but later the same day, he was transported back to South Africa as a matter of urgency and re-hospitalised on arrival.

32. His condition improved and he was discharged from hospital. He then flew to the USA, both to recuperate and to keep a number of scheduled appointments. Additional clothing was packed in his suitcase, which had arrived from Namibia in the interim.

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33. In the United States, Reverend Chikane again fell ill after wearing clothing taken from his suitcase. Again, after being hospitalised, his condition improved. This pattern was repeated twice more.

34. During his third hospitalisation in the USA, extensive medical tests were carried out on Reverend Chikane. P-Nitrophenol was found in his urine and this, together with specific symptoms and other test results, indicated organophosphate poisoning. P-Nitrophenol is a rapidly biodegradable metabolite of Parathion, of which Paraoxon is the active ingredient.

(iv) THE CRIME:

35. During the 1980s, various individuals / organisations were actively involved in efforts to abolish apartheid in South Africa and/or overthrow the government of the day by violent means. Methods used included the promotion of economic sanctions against and the international isolation of South Africa, as well as direct propagation of civil disobedience in order to render the country ungovernable.

36. During 1987, at a meeting arranged by the South African Defence Force, accused No 1 took cognisance of an order to act against high profile members of the anti-apartheid liberation struggle in order to neutralise their influence. He also took note that, in extreme cases and only as a last resort, consideration could be given to killing them.

37. A list containing the names of persons identified in terms of this order was handed to senior members of the security establishment, including accused No 1. Reverend Chikane's name was among those on this list.

38. The execution of the above-mentioned order was discussed by accused No 1 and No 2.

39. Accused No 1 and No 2 then decided that a special unit should be set up within the Security Branch for the purpose of carrying out this order.

40. Accused No 4 and No 5 were attached to this special unit at all relevant times and from January 1989, accused No 3 served as the commander of the unit.

41. After General Smit assumed command of the Security Branch, he was informed about the objectives of the special unit.

42. Acting on the orders of General Smit, accused No 3 made contact with Dr Basson and requested him to assist the special unit in acquiring substances that could be applied against the enemy. Dr Basson arranged for contact to be made with Dr Immelman.

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43. A number of clandestine meetings took place thereafter between Dr Immelman and accused No 3, 4 and 5. At these meetings, these three accused discussed the details of substances that could be used against the enemy. In respect of Reverend Chikane, a substance that would specifically lead to his death was required. Dr Immelman identified a certain substance for this purpose and explained that it should be applied to close-fitting clothing items, such as a shirt collar and/or underpants. The toxic substance, which was subsequently identified as Paraoxon, was supplied to them by Dr Immelman.

44. Paraoxon is a lethal toxic substance.

45. On 4 April 1989, Dr Immelman delivered the Paraoxon to the accused, as reflected in **Annexure "A" of the Indictment.**

46. Reverend Chikane was due to depart for Windhoek from Jan Smuts Airport on 23 April 1989.

47. On the evening of 23 April 1989, accused No 3 and No 4 were at the airport and Reverend Chikane's suitcase was intercepted. They then applied the Paraoxon supplied to them by Dr Immelman, to the contents of Reverend Chikane's suitcase.

48. The poisoning of Reverend Chikane's clothing resulted in the series of events set out in paragraphs 31-34.

49. The order to kill Reverend Chikane was issued by General Smit to accused No 3 in terms of an order conveyed to accused No 1 and No 2. The accused acted in pursuance of a common purpose to murder Reverend Chikane. At all relevant times, the accused acted unlawfully and with the necessary intent.

AGREEMENT REGARDING A JUST SENTENCE:

J. AGGRAVATING CIRCUMSTANCES:

50. The administration of poison in order to secretly eliminate opponents is an egregious, reprehensible and universally abhorrent act.

51. Accused No 1 was the Deputy Chief of the Republic of South Africa's Police at the time of commission of this crime.

52. Accused No 2 was a prominent political leader and member of the ruling party of the day.

53. Reverend Chikane was a religious leader.

54. The motive for the planned murder of Reverend Chikane was to prevent him from lobbying abroad for economic sanctions against South Africa and to deprive him of his role in promoting internal résistance against the government..

55. The **Promotion of National Unity and Reconciliation Act, No 34 of 1995**, made provision for persons who were guilty of committing gross human rights violations for political purposes, to apply for amnesty

56. On several occasions, accused No 1 and 2 availed themselves of this right and testified before the Truth and Reconciliation Committee, each time under oath

57. The accused did not apply for amnesty in respect of the charge to which they have now pleaded guilty.

58. On 10 July 1997, accused No 1 testified before the TRC that he was not aware of the existence of a so-called "internal hit list" that was circulated within the security community.

59. Acts of reconciliation towards Reverend Chikane by accused No 2 took place only after the National Prosecuting Authority had indicated that it had a *prima facie* case against accused No 3, 4 and 5 in respect of the poisoning of Reverend Chikane.

60. During the trial of Dr Wouter Basson, who was charged, *inter alia,* with the poisoning of Reverend Chikane, the accused, and in particular accused No 2, remained silent about their role in the attempted murder and avoided any suggestion of attempted reconciliation.

61. During the prosecution of Dr Basson, accused No 3, 4 and 5 were approached on several occasions by members of the prosecution team with a view to giving evidence as State witnesses. They were offered indemnity from prosecution in terms of Section 204 of Act 51 of 1977 in this regard. The accused consistently refused to offer their cooperation and persisted in furnishing the State with a false version of events. The accused offered instead to cooperate with Dr Basson's legal defence team

62. After conclusion of Dr Basson's trial, Reverend Chikane wrote to accused No 3, 4 and 5 several times, pleading with them to reconcile with him. The accused consistently ignored all his requests.

K. MITIGATING CIRCUMSTANCES:

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63. None of the accused has any previous convictions. Their respective ages are 71 (accused No 1), 70 (accused No 2), 69 accused No 3), 60 (accused No 4) and 63 (accused No 5).

64. The accused are all married.

65. The accused have all pleaded guilty.

66. Disposal of this case in terms of Section 105A of Act 51 of 1977 saves both the court and the State the cost and inconvenience of a protracted trial.

67. The accused have assisted the State by pleading guilty, in so far as it would otherwise have been difficult for the State to prove its case, since the State is not in possession of any evidence regarding the involvement of accused No 1 and No 2 and has been able to establish their role only as the result of their cooperation. In addition, accused No 3 and No 4 came forward to disclose their roles.

68. The accused have shown remorse for their deeds and have undertaken to act as State witnesses in the event of a prosecution being instituted against General Sebastiaan Smit.

69. Accused No 2 publicly washed Reverend Chikane's feet as a gesture of reconciliation. This act of contrition must be seen against the background that it was performed voluntarily by accused No 2

70. The sincere remorse of accused No 2 in regard to past deeds is further illustrated by his act of reconciliation towards the mothers of 9 of the 10 Nietverdiend victims killed by the Security Forces, despite the fact that accused No 2 had no knowledge of this operation at the time and nor was it sanctioned by him.

71. At all relevant times, the accused were acting by virtue of their official positions and posts, in defence of the lawfully elected government of the day, to which they had sworn an oath of allegiance

72 The offence was committed during a period of intense conflict and division between the various communities and structures in South Africa. On the one hand, the ANC and other anti-apartheid organisations that wished to overthrow the government by violent means, had thrown everything into the struggle to achieve their objectives. All members and spheres of society were drawn into the struggle in order to foment resistance in a variety of forms. On the other hand, the then lawfully elected government, in turn, used all the methods and powers at its disposal. The Security Forces, and in particular the SA Police, played a key role in combating the onslaught. Amid the violence raging countrywide as well as in Namibia, the SA Police were increasingly required to act against trained military [illegible] which had a significant influence on [illegible] At times,

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they were forced to sacrifice the principle of minimum force and, amid the violence and bloodletting, the distinction between lawful and unlawful action became blurred.

73. At the time of commission of the offence outlined in Count 1, accused No 1 was no longer head of the Security Police and was also no longer involved in the project.

74. Neither accused No 1 nor No 2 had knowledge of the specific attempt on Reverend Chikane's life. Notwithstanding the fact that accused No 2 had made it clear that he wished to be informed in advance if consideration was being given to killing a specific individual, he was not informed in this particular case.

75. Accused No 3 and No 4 were subordinates who acted in terms of a direct order issued by the Security Branch chief, General Smit.

76. The original project aimed at neutralising the influence of high profile members of the anti-apartheid liberation struggle, was not initiated by the accused, but by the SA Defence Force, which itself was acting on higher authority.

77. As secretary-general of the South African Council of Churches and vice president of the United Democratic Front, Reverend Chikane played a key role in fomenting resistance to the former government. The United Democratic Front succeeded in mobilising the masses countrywide, resulting in widespread unrest and violence.

78. In the run-up to the TRC process, accused No 1 did everything possible to encourage members and former members of the SA Police to participate in the process. When the incident involving Reverend Chikane came to his notice, he held discussions with former chiefs and generals of the SA Defence Force in an attempt to persuade them to take part in the process as well. Because members of the defence force were involved in the incident, any attempt to seek amnesty would necessarily have been unsuccessful without their cooperation. The military generals were of the opinion, however, that the **Promotion of National Unity and Reconciliation Act, No 34 of 1995,** contained one-sided provisions that rendered the process unacceptable to them.

79. After conclusion of the TRC process, accused No 1 and No 2 did everything they could to promote creation of a further process that could address shortcomings exposed by the TRC process. Following the decision to prosecute accused No 3, 4 and 5, accused No 1 and No 2 also held discussions with Reverend Chikane with a view to the institution of such a process. He showed empathy for the problems with which accused No 1 and No 2 were wrestling.

80. With the formulation of the National Prosecuting Authority's prosecutorial guidelines entitled "*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*" (see **Annexure "B"**), a process was created that offered built-in protection for individuals who wished to make use of it, and the accused lost no time in coming forward and making full disclosure regarding this incident, which they had not been able to do in response to the letters from Reverend Chikane referred to in paragraph 62 above.

L. SENTENCE AGREEMENT:

81. In the light of the circumstances set out above, agreement has been reached on the following as appropriate sentences in respect of count 1:

Accused No 1 and No 2:

Each of the accused is sentenced as follows:

> "**10 (ten)** years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

Accused No 3, 4 and 5:

Each accused is sentenced as follows:

> "**5** (five) years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

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SIGNED AT **PRETORIA** ON THIS DAY OF JUNE 2007.

AR ACKERMANN SC
Director of Public Prosecutions
Priority Crime Litigation Unit.

1. JOHANNES VELDE VAN DER MERWE

2. ADRIAAN JOHANNES VLOK

3. CHRISTOFFEL LODEWIKUS SMITH

4 GERT JACOBUS LOUIS HOSEA OTTO

5. HERMANUS JOHANNES VAN STADEN

JAN WAGENER
ATTORNEY FOR THE ACCUSED
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833 CHURCH STREET
ARCADIA, PRETORIA
TEL: (012) 342-3525
DOCEX 321 PRETORIA

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

22 October 2007

Ms Brigitte Mabandla, MP
Minister of Justice and Constitutional Affairs
Private Bag X276
PRETORIA
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Dear Minister:

STATE V VAN DER MERWE AND OTHERS

As you would know, the case of those who were involved in my poisoning, namely, Johannes Velde VAN DER MERWE, Adriaan Johannes VLOK, Christoffel Lodewikus SMITH, Gert Jacobus Louis Hosea OTTO and Hermanus Johannes VAN STADEN was disposed of at the Pretoria High Court on the 17th August 2007 through a Plea Bargaining arrangement between the accused and the State.

Although I am pleased that we have concluded this matter, I am concerned about a number of issues, which I would like to raise with you and, hereby, the Government of the Republic of South Africa. I hope that you will find it necessary to share my concerns with Cabinet as I believe that this will be helpful in handling other matters of a similar nature.

The first point I would like to raise is the handling of this matter by the National Prosecuting Authority (NPA). From my interaction with the relevant officials within the NPA, it is clear to me that the said officials are simply the wrong people to deal with the 'post-TRC' matters. My experience with them is that they will not be able to relate to victims of gross violation of human rights or their next of kin with the sensitivity that is required. In fact, they did not seem to understand the nature of the challenge we were facing. Firstly, my court case was used to fight battles between the NPA and the Government about the 'Guidelines' for dealing with post-TRC cases. Throughout this process I was left with a feeling that no one in fact cared about me – as a 'victim'. What mattered were the politics around the handling of the post-TRC cases and how people would win their battles.

As part of the consultative processes relating to the case of the *State v Van der Merwe and Others*, Adv. Ackerman, the Special Director in the Priority Crimes Litigation Unit, and his assistant visited me (as the 'victim'). Instead of just consulting me as 'the victim', he entered into an acrimonious argument with me about the approach of the

Mr M Hagga
Assistant

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Government on 'post-TRC' matters and the Guidelines. From this interaction, it was clear that he was radically opposed to the Guidelines as agreed upon by Cabinet and the Parliament of the Republic of South Africa. In fact, he seemed to be more interested in prosecution for the sake of it rather than the management of this difficult 'post-TRC' process.

What I detested most was that my case was being used to fight their battles with the Government. In pursuit of this objective, a draft letter which was constructed in a manner that would enhance their position in the prescribed forum with other departments was presented to me for my signature. What was more disgusting for me was that when I refused to sign the draft letter, Adv. Ackerman then threatened to use Section 204 of the Criminal Procedures Act against me to force me to surrender all the information he claimed I had received from Mr. Vlok on my poisoning. I dared him to do so, and reminded him that this was tried against me during the apartheid days and it did not work and that there is no reason why it would work now. He backed off and left. His colleague who was with him is my witness in this regard.

Detailed ~~Detailed~~ Not true I was present No threats Made in my presence

V. Mhaga Hearsay evid. act I meeting

Secondly, I was not consulted about the details of the Plea Bargaining Agreement. The NDPP informed me in writing about the arrangements for suspended sentences for the accused. My views were not solicited in this regard. In fact, I was not informed about the basis for the Plea Bargaining Arrangements. I only saw the Plea Bargaining Agreement during the proceedings in Court. I was particularly distressed by the submission in Section E, paragraph 6.3 of the 'plea agreement' which claims that I was consulted about it and that I was "satisfied with the plea agreement" and that I did "not wish to make any further representation in connection with the matter". The reality is that I could not be satisfied with something I had not seen. Having now considered it, there are naturally a number of issues I have concerns about which I had no opportunity to deal with. This leads me to the second matter I would like to raise.

Failure to consult me before the Plea Bargaining Arrangements were made resulted in the presentation of documents in Court which did not only have factual errors, but were politically and philosophically problematic to me as a 'victim'. Firstly, my background is presented as if I was both General-Secretary of the SACC and Vice President of the UDF when, in fact, I held these positions at different times (see paragraph 28). Secondly, the Plea Agreement document falsely argues that it was the stated policy of the UDF "to propagate and support ... *violence* for the ... purpose of rendering the country ungovernable" (own emphasis).

There are three issues I would like to raise on matters of substance. Firstly, Count 2 was withdrawn as part of the plea arrangements, and by so doing, the collaboration between the Security Police Special Unit and Wouter Basson and his team in producing and or procuring the lethal chemicals used was not probed further when it is clear from the plea bargain arrangement document that more information could have been extracted. Secondly, there is a reference in the plea arrangement document to a 'list' containing the names of 'high profile' members of the anti-apartheid liberation struggle who were to be acted against, and in 'extreme cases' be killed (paragraph 37). There is no indication that this matter was probed further. The State should be interested, for instance, in a copy of such a list to determine as to who else was on the list and what happened to them. Thirdly, there is no indication as to what discussions the NPA had with General Basie Smit and Dr. Basson to source more information about their operations and what the NPA is planning to do about them. Fourthly, there is no indication that there has

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been a process to probe the involvement of the SADF on these matters and what happened to their list of external targets.

The Guidelines for the 'post TRC' cases make it clear that our objective is not just prosecution but the need to solicit more information about what happened to victims of gross violation of human rights, especially those who died or disappeared. Moreover, it is to get a better understanding of how the old national security management system functioned to make sure it does not happen again. Although the Van der Merwe and Others case assisted me to know more about what happened to me, failure to follow the Guidelines (and thereby collaborate with other entities of the State, like intelligence services, the Police and the Defence Force) made us miss opportunities to learn more about what befell other people who might have been affected in the same way.

Lastly, I found the Court itself completely 'foreign' and insensitive to me as a 'victim'. Firstly, the Court was completely white, from the Judge to the Prosecutors, defence lawyers and the accused. But worse, the proceedings were conducted in Afrikaans without due regard to the 'victim', especially where technical, legal and court processes are involved. As a result, I missed the greater part of the proceedings in the court. I am sure that we can make the court friendlier to victims than what I experienced that day.

On the side of Government, I felt that the handling of the *State v Van der Merwe and Others* case was left to me, as a 'victim', to explain to the public instead of the State or the Government. No effort was made by Government to manage this process or deal with public perceptions about it. No one got involved to make sure that the process achieved the objectives Government had agreed upon. Clearly, once the NPA acted unilaterally the Government apparently walked away from the matter. I do not think that this hands-off approach assisted us in any way to achieve the objectives set out in the Guidelines.

I shall be pleased, Minister, if the Government could deal with all the matters I have raised as well as remedy the situation before another case is dealt with.

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Sincerely Yours,

FRANK CHIKANE
DIRECTOR-GENERAL