

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING
EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR PROSECUTION
OF TRUTH AND RECONCILIATION COMMISSION CASES**

HELD AT:

Sci-Bono Discovery Centre, corner Mirriam Makeba & Helen Joseph Street,
Newtown, Johannesburg

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APPLICATION FOR CROSS-EXAMINATION OF ADV V PIKOLI

I, the undersigned,

LUNGELO GUMEDE

1. do hereby declare under oath as follows:
 - 1.1. I am an adult male attorney in the employ of the State Attorney Pretoria, stationed at Salu Building, 316 Thabo Sehume Street, Pretoria. I am the attorney of record for the South African Police Service ("SAPS") in this Commission.
 - 1.2. Due to my acquaintance with the facts of this matter and the issues involved in the present application, I am authorised to depose to this affidavit on behalf of the SAPS.
 - 1.3. The facts deposed herein are, save where the contrary appears from the context, within my personal knowledge and to the best of my belief true and correct.
 - 1.4. Where I make submissions of a legal nature, I do so in my capacity as

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an attorney and on advice of counsel on brief for the SAPS in this Commission, which advice I accept as being true and correct.

PURPOSE OF THIS AFFIDAVIT

2. This affidavit is filed in support of the SAPS's application for cross examination of Adv Vusumzi Patrick Pikoli ("Adv Pikoli"). The application is made pursuant to Adv Pikoli's affidavit dated 6 May 2015 and his subsequent oral testimony tendered before this Commission on 12 and 13 March 2026.
3. The application is brought in terms of Regulation 8(3) of the Regulations governing the Commission of Inquiry read with the Commission's rules on cross-examination.

BASIS FOR THIS APPLICATION

4. The evidence tendered by Adv Pikoli confirms allegations and assertions implicating the SAPS and/or its members in matters falling within the Commission's Terms of Reference.
5. In terms of its mandate, the Commission must, in relation to the period 2003, inquire into, make findings, report on, and make recommendations concerning the following allegations:
 - 5.1. whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases;
 - 5.2. whether any members of the South African Police Service or the

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National Prosecuting Authority improperly colluded with such attempts to influence or pressure them; and

- 5.3. whether any action should be taken by any Organ of State, including possible further investigations to be conducted or prosecutions to be instituted, where appropriate, of persons who may have acted unlawfully by –
 - 5.3.1. attempting to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases; or
 - 5.3.2. members of the South African Police Service or the National Prosecuting Authority colluded with or succumbed to attempts to influence or pressure such members to stop investigating or prosecuting TRC cases; and
- 5.4. whether, in terms of the law and fairness, the payment of any amount in constitutional damages to any person is appropriate.

ASPECTS ARISING FROM ADV PIKOLI'S EVIDENCE

6. Adv Pikoli, a former National Director of Public Prosecutions (NDPP), testified about *inter alia* the following:
 - 6.1 The status of TRC prosecutions during his tenure;
 - 6.2 Political interference by the high ranking government officials; and
 - 6.3 Failed efforts to secure investigative support with emphasis placed on the influence by political figures and internal conflicts within the government agencies.

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7. The relevant aspects arising from Adv Pikoli's affidavit which require further examination, and form the basis of the SAPS's request for his cross-examination relate to the allegations that:

7.1. Adv Pikoli confirms the contents of the founding affidavit of Thembisile Phumelele Nkadimeng and supporting affidavit of Anton Ackermann SC ("Ackermann") insofar as they relate to him.¹ In particular, he confirms the contents of the *Calata Group's* affidavit under the heading "*Political constraints*". He further confirms that there was political interference that effectively barred or delayed the investigation and possible prosecution of the cases recommended for prosecution by the TRC.²

7.2. It is common cause that early in 2006, Adv Pikoli had approached the then National Commissioner of Police, Mr. J Selebi ("the National Commissioner"), the DG of Justice, and the heads of the National Intelligence Agency ("NIA") and the DSO (also known as "the Scorpions"), requesting them to nominate senior officials to assist the Priority Crimes Litigation Unit ("PCLU"). This was to enable compliance with the Prosecution Policy guidelines at the time. Adv Pikoli alleges that the SAPS and NIA never provided the PCLU with the necessary support to conduct its investigations adequately.³

7.3. It is alleged that early in 2006, the National Commissioner objected to Ackermann's participation claiming that Ackermann intended to prosecute

¹ Paragraph 13: page 5: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

² Paragraph 14: page 5: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

³ Paragraph 29: page 11: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

the leadership of the ANC. This is notwithstanding the formal denial by the NPA that no such plans were in place. Adv Pikoli advised the National Commissioner 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.⁴

- 7.4. Adv Pikoli proposed that Dr Ramaite, the Deputy National Director of Prosecutions (“the DNDPP”), should chair the Task Team formed pursuant to the Prosecution Guidelines. This was aimed at addressing the complaints related to Adv Ackermann and to get the Task Team working. The proposal was accepted.⁵
- 7.5. The Task Team met for the first time on 12 October 2006 and Adv Pikoli attended the opening session of the said meeting together with Ms. Kalyani Pillay (his adviser), the Directors General of the NIA and Justice and Mr Jafta from the Presidency. Apart from this meeting, he did not participate further in the activities of the Task Team. Adv Pikoli received reports from time to time on their activities. These reports led him to believe that the committee was functioning and securing the requisite co-operation from the other agencies which had previously been missing.⁶
- 7.6. Dr Ramaite reported to Adv Pikoli that at the Task Team meeting on 25 October 2006, he had received an audit report from Ackermann on all cases in the possession of the PCLU. Dr Ramaite further reported that the *Chikane* matter was discussed by the Task Team for the first time at

⁴ Paragraph 30: page 11: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁵ Paragraph 35: page 14: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁶ Paragraph 38: page 14: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

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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 the prosecution of the case. Ackermann however indicated that Rev Chikane had left the matter in the hands of the NPA.⁷

7.7. In early December 2006, Adv Pikoli was informed by Dr Ramaite of the renewed contention by the National Commissioner that Rev Chikane had not been consulted. Rev Chikane had in fact been extensively consulted in relation to the proposed prosecution. Adv Pikoli personally held discussions with him during the course of interactions during 2006 and 2007. Adv Pikoli also met with him separately. Rev Chikane advised him 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.⁸

7.8. In early 2007, as a result of the differences in approach that had developed between the NPA and the SAPS, NIA and DoJ, Adv Pikoli informed the National Commissioner and the Directors General that there was a serious misunderstanding, he 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 2007.⁹

⁷ Paragraph 40: page 15: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁸ Paragraph 41: page 16: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

⁹ Paragraph 44: page 17: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

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7.9. Towards the end of January 2007 Ackermann and Adv Mthunzi Mhaga (also of the PCLU) reported to Adv Pikoli that they had met with Rev 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 Adv Pikoli 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 he instructed the PCLU to act accordingly.¹⁰

7.10. During the course of the next few months that followed, the legal representative of Messrs. Otto Smith and van Staden, Vlok and van der Merwe, held detailed negotiations with Ackermann and members of the PCLU in regard to a plea and sentencing agreement.¹¹

7.11. Adv Pikoli would have preferred a full prosecution in this case because it 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 Adv Pikoli 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.

7.12. Moreover Adv Pikoli could not rely on the police to investigate this case, and the other political cases, thoroughly. Therefore, a plea and sentence bargain was in his view the most appropriate compromise in the

¹⁰ Paragraph 45: page 17: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

¹¹ Paragraph 55: page 22: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

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circumstances.¹²

7.13. Adv Pikoli reminded the Minister that his 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. Adv Pikoli 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 his capacity as then DG of Justice, Adv Pikoli was actually present in the office of the DPP when representatives from the SAPS collected the said dockets.¹³

8. Further allegations that require examination are found in Adv Pikoli's oral testimony, wherein it is stated that:

8.1. The Department of Justice was the one government department that had to facilitate the work of the TRC. So the logistical arrangements and administrative arrangements were then the responsibility of the Department of Justice. And then also the expectation was that following the reports of the Commission itself and the recommendations that would have been made in that report, that again the Department of Justice played a leading role in ensuring the implementation of the recommendations.¹⁴

¹² Paragraph 60: page 23: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

¹³ Paragraph 72: page 27: Bundle 2: Vusumzi Pikoli (Calata Group Volume)

¹⁴ Transcript 12 March 2026: page 11 from lines 19 to page 12 line 1

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- 8.2. Adv Pikoli explained that government had taken a decision that the work of government needed to be grouped to ensure that there was proper coordination of the work and to ensure cooperation and collaboration amongst government departments. So the work or the mandate of the departments that formed part of the criminal justice value chain, meant that there was a need to work together in a collaborative fashion to ensure that there is proper coordination and that they strive for an integrated criminal justice system.
- 8.3. This is based on the principles of Cooperative Governance, which was already in the Constitution. It was ensuring that the work of government is structured in a manner that will facilitate that cooperation. So it was following what the Constitution required in terms of Chapter 3.¹⁵
- 8.4. But the dilemma being having just emerged from the conflict of the past when you had the defenders of apartheid on one side and members of the liberation movement on the other side which led to serious violence in South Africa, waging of the armed struggle, and the brutal response of the apartheid government at the time, that we still had fragile peace in South Africa. This was a matter of serious national concern, government needed to address this reality and find a way of dealing with it as a country.¹⁶
- 8.5. Adv Pikoli conceded that with the benefit of hindsight and some can argue with foresight it will not need hindsight, they were dealing with a

¹⁵ Transcript 12 March 2026: page 14 from line 15 to page 15 line 21

¹⁶ Transcript 12 March 2026: page 22 lines 4 to 11

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novel situation and for him everything had to be done within the framework of the law. But as things turned out, it was clear the colleagues he was working with did not share his thinking.¹⁷ The situation was fragile, so to think that by 2003 everything would be normal, it would have been naïve to think so. The approach was rather to try do whatever that can be done to make sure that the country does not go back.¹⁸

8.6. It was then the responsibilities of the DGs to then try to interpret and execute or bring to reality what the President announced in parliament in 2003.¹⁹ Adv Pikoli stated upfront that he fully agreed with what the President said in 2003.²⁰ He was fully committed and drove that process from his position as the Director-General of the Department of Justice, having to give effect to policy positions of government.²¹ They were trying to find creative ways to give effect to the President's statement.²²

8.7. Based on the evidence that was led before the Commission when Ackermann testified as well as when Adv Ngcuka testified that the DSO declined to appoint investigators and after the SAPS was approached, the Head of Detective Services said that the NPA should get a written instruction from the President if they wanted SAPS to investigate. Adv Pikoli testified that he was not aware of these developments while he

¹⁷ Transcript 12 March 2026: page 42 lines 9 to 19

¹⁸ Transcript 12 March 2026: page 46 lines 11 to 20

¹⁹ Transcript 12 March 2026: page 36 lines 6 to 15

²⁰ Transcript 12 March 2026: page 40 lines 19 to 25

²¹ Transcript 12 March 2026: page 41 lines 1 to 3

²² Transcript 12 March 2026: page 66 lines 10 to 12

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was DG of Justice.²³

8.8. It appeared to Adv Pikoli that the former apartheid generals had influence with senior members of the Executive who in turn were placing pressure on him. This was amplified by the resistance coming from SAPS in the form of the then National Commissioner and also supported by the Department of Justice and the National Intelligence Agency. Adv Pikoli added that it appeared to be coming from the Executive because the instruction came from the Executive.²⁴

8.9. It is quite evident that all these imaginations were aimed at ensuring that no generals of apartheid South Africa would be prosecuted and if they are not prosecuted, then obviously that dossier which was being compiled elsewhere with the collusion of a member of SAPS, Brits, and the former National Commissioner, would then never see the light of day.²⁵

8.10. In relation to what led to the removal of TRC dockets, Adv Pikoli testified that at the time he was still at the Department of Justice and then by virtue of their discussions at the cluster, the National Commissioner, would be talking about the NPA wanting to prosecute the President together with the ANC members who were denied amnesty by the TRC. This became a source of tension between the NPA and the police in

²³ Transcript 12 March 2026: page 25 from line 23 to page 26 line 5

²⁴ Transcript 13 March 2026: page 84 lines 2 to 15

²⁵ Transcript 13 March 2026: page 98 lines 3 to 9

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particular around this issue which then led to suspicions about the motive of the NPA.²⁶

8.11. Dockets were taken away to the SAPS. Adv Pikoli was present when this was happening at the offices of the DPP, Pretoria in his capacity as the Co-Chair of the cluster.²⁷ He finds it reasonable to infer that these are the dockets that were a source of tension and controversy in the office of the DPP in Pretoria, but he cannot confirm or verify that.²⁸

8.12. Adv Pikoli confirmed the understanding that it was the prosecutor led dockets or investigations, during the time of the DSO, (the Scorpions) because that was the methodology of the DSO, what they used to refer to as the troika principle, intelligence driven and prosecution led investigations.²⁹

8.13. Adv Pikoli testified in respect of what SAPS was to do with the dockets, he would not know as to what was in the mind of his predecessor but that it could have been out of frustration and also to show that he had closed the ANC matters. So Adv Pikoli thinks he was washing his hands off to say look, you can take this because insofar as the 37 ANC members, he is *functus officio*.³⁰

8.14. In respect of the hand over and if dockets were just handed over lock, stock and barrel, with no forensic investigation, Adv Pikoli's recollection

²⁶ Transcript 12 March 2026: page 28 lines 11 to 22

²⁷ Transcript 12 March 2026: page 29 lines 5 to 8

²⁸ Transcript 12 March 2026: page 29 lines 13 to 16

²⁹ Transcript 12 March 2026: page 30 lines 13 to 18

³⁰ Transcript 12 March 2026: page 31 lines 5 to 16

was that when he was there, there was no auditing. He does not know whether it had already been done and has no knowledge of that.³¹

8.15. From Adv Pikoli's recollection, he believes that Commissioner Tim Williams would have been there when these dockets were removed from the offices of the Director of Public Prosecutions, Pretoria.³²

8.16. Adv Pikoli testified that it was the Intelligence Services, SAPS, and DOJ who were proven to be an obstacle, even at the time when the DSO or the PCLU required investigators to assist them in the matter. There was this obscene obsession to get rid of Ackerman, because every time the matter would come up about working together, it would be put as a condition for the collaboration.³³ SAPS was an obstacle because it was in favour of eliminating private prosecutions and civil litigation.³⁴

8.17. Adv Pikoli decided that in order to eliminate the perceived "*Ackermann obstacle*" and knowing Ackermann to be abrasive and the cause of friction, appointed Dr Ramaite to whom Ackermann reported, tactically for things to proceed, to attend those meetings. Dr Ramaite would then be the one to take the lead in the discussions so that it was not Ackermann who was the face of the post-TRC prosecutions or otherwise that animosity would have continued, which would be a course for further delays.³⁵

³¹ Transcript 12 March 2026: page 31 lines 18 to 23

³² Transcript 13 March 2026: page 166 lines 2 to 4

³³ Transcript 12 March 2026: page 76 lines 10 to 25

³⁴ Transcript 12 March 2026: page 77 lines 18 to 25

³⁵ Transcript 13 March 2026: page 153 lines 2 to 10

8.18. Furthermore, Adv Pikoli confirmed that the lack of investigative support was really the nub of the matter and thus without investigation officers, matters that required investigation would not proceed.³⁶ His approach was always that of tactical flexibility, without compromising the independence of the NPA. As part of exercising that tactical flexibility, he felt that as a demonstration of his willingness to collaborate and cooperate and thus did not feel, at a personal level, scared to have open discussions with members of the executive around the TRC issues.³⁷ They were dealing with a matter that was not your run-of-the-mill matter.³⁸

8.19. Mr Koopedi from the NIA showed willingness to say that they were prepared to go through volumes of records in all cases. NIA might have knowledge of facts not known by other members of the Task Team to put things in a proper perspective. This would enable availability of the information that might not have been in possession of the NPA to assist them in taking appropriate decisions.³⁹

8.20. Adv Pikoli reached a tipping point when there was one view or interpretation by the DG's and the National Commissioner on one hand, and the understanding by the NPA of what was meant in the guidelines regarding the roles to be played by the DG's. This was particularly in reference to the question of the NPA and its independence.⁴⁰ The 'penny

³⁶ Transcript 13 March 2026: page 4 lines 15 to 20

³⁷ Transcript 13 March 2026: page 18 lines 3 to 10

³⁸ Transcript 13 March 2026: page 18 lines 16 to 24

³⁹ Transcript 13 March 2026: page 39 lines 8 to 16

⁴⁰ Transcript 13 March 2026: page 57 lines 6 to 11

finally dropped with Adv Pikoli towards the end of 2006.⁴¹

- 8.21. The misunderstanding arose from the side of the DGs of other Departments in that they saw themselves as entitled to make recommendations before there could be a decision on the part of the NPA.⁴²
- 8.22. Adv Pikoli was disappointed that there was a general expectation on the part of the DOJ, SAPS, and NIA that there would be no prosecutions and that he was expected to play along. His conscience and oath of office would not allow that.⁴³
- 8.23. It was stated time and time again that the *Chikane* matter, was ready for trial in 2004 because there was no need for investigations on this particular matter. So it did not fall into the category of those matters that the NPA required investigators.⁴⁴
- 8.24. Adv Pikoli confirmed that the assumption he made at that time was that the committee was functioning and securing the requisite cooperation from the other agencies. However, in due course he discovered that cooperation was not forthcoming.⁴⁵
- 8.25. The NPA needed somebody who would be their political champion in terms of the mandate of the NPA, particularly to protect and insulate it

⁴¹ Transcript 13 March 2026: page 58 lines 14 to 19

⁴² Transcript 13 March 2026: page 74 lines 9 to 20

⁴³ Transcript 13 March 2026: page 76 lines 15 to 25

⁴⁴ Transcript 13 March 2026: page 155 lines 19 to 23

⁴⁵ Transcript 13 March 2026: page 34 lines 17 to 22

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from the politics of the day. That would enable the NPA to focus on its stated mandate being instituting criminal proceedings on behalf of the State. This is the point that Adv Pikoli made in a meeting with the President and the Minister of Justice.⁴⁶

9. When stripped to the bone of relevance within the framework of the Commission's mandate, other than mentioning the National Commissioner, Adv Pikoli makes broad allegations implicating members of the SAPS in the following respects:

9.1. The former apartheid generals were able to exercise undue influence over senior members of the Executive who in turn were placing pressure on Adv Pikoli. This was amplified by the resistance coming from SAPS in the form of the then National Commissioner. **It is thus important to understand what is meant by this amplified resistance.**

9.2. It was the Intelligence Services, SAPS, and DOJ who were proven to be an obstacle, even at the time when the DSO or the PCLU required investigators to assist them. SAPS was an obstacle because it was in favour of eliminating private prosecutions and civil litigation. **It is therefore important to understand what is meant by the SAPS being an obstacle and how that was interpreted as political interference.**

9.3. Adv Pikoli could not rely on the SAPS to investigate political cases thoroughly. The lack of investigative support was the nub of the problem because without investigation officers, matters that required investigation could not proceed. **This allegation needs to be tested as against the**

⁴⁶ Transcript 13 March 2026: page 91 lines 6 to 12

evidence of General Jacobs to the effect that investigators were being appointed to deal with specific matters on behalf of the SAPS within the Interdepartmental Task Team (“the ITT”).

- 9.4. Adv Pikoli was disappointed that there was a general expectation on the part of the DOJ, SAPS, and NIA that there will be no prosecutions and that he had to play along. **It is important to understand what inspired such an expectation, how and which members of the SAPS contributed to such an expectation.**

CROSS EXAMINATION FOCUS

10. Flowing from Adv Pikoli’s evidence, the following areas of contention will then be addressed during the intended cross examination:
- 10.1. The various reasons why the PCLU was unable to pursue any TRC cases;
 - 10.2. The importance of General Jacobs statement in either putting the evidence of Adv Pikoli into its proper context, and rebutting many aspects of his evidence;
 - 10.3. The *Chikane* matter and its relation to investigation of other matters;
 - 10.4. The minutes of the meetings of the ITT, the progress made and what led to its collapse;
 - 10.5. The steps taken in the ITT in respect of the appointment of investigators by SAPS;

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- 10.6. Based on his assumptions, when and how did Adv Pikoli discover that cooperation from the other agencies was no longer forthcoming in the ITT;
 - 10.7. The implication of Adv Pikoli's request that the NPA needed a political champion, to protect it from the politics of the day;
 - 10.8. The lack of cooperation and collaboration amongst government departments caused by Ackermann and the lack of regulations when dealing with TRC cases;
 - 10.9. Establishing further whether Adv Pikoli's interaction involved the Minister of Safety and Security in respect of the alleged lack of cooperation coming from SAPS; and
 - 10.10. The effects intended to widen the ambit of opportunities to reconcile should be seen as reconciliation efforts, as opposed to being efforts at stopping investigations of TRC cases.
11. It needs to be stated that the issues identified as focal point(s) for cross examination above are not intended to constitute an exhaustive list, but rather to assist the Commission in the exercise of its discretion in considering this application.

CONCLUSION


12. Based on the above, it is submitted that it is in the interest of the SAPS that the veracity of the allegations made by Adv Pikoli be tested through cross examination and put into context to assist the Commission in its findings.

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DEPONENT

THUS SIGNED AND SWORN TO before me at Pretoria on this 4th day of **MAY 2026**. The deponent having acknowledged that he knows and understands the contents of this affidavit, has no objection to take the prescribed oath and considers the oath to be binding on his conscience.



COMMISSIONER OF OATHS

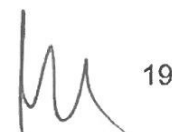
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Office of the Head
 Priority Crimes Litigation Unit
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P. O. Box 752,
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INTERNAL MEMORANDUM

VGM Building
 Hartley St.
 Weavind Park
 0001
 Pretoria
 South Africa

TO : ADV VP PIKOLI
 NATIONAL DIRECTOR OF PUBLIC
 PROSECUTIONS

FROM : ADV AR ACKERMANN
 SPECIAL DIRECTOR OF PUBLIC
 PROSECUTIONS AND HEAD: PRIORITY CRIMES
 LITIGATION UNIT

DATE : 16 MAY 2006

SUBJECT : NATIONAL INTELLIGENCE AGENCY INCIDENTS

Tel: (012) 845 6474

Dear Adv Pikoli

1. I confirm that you advised me that at a recent meeting, the National Commissioner made certain allegations against myself, my involvement in cases arising from the TRC process and expressed a reluctance on his part to have SAPS cooperate with the PCLU. I further confirm that you asked me for the basis of the acrimony which exists between myself and the National Commissioner.
2. The purpose of this memo is to respond to the above allegations.

Number of copies: 2

*Copy 1: Adv VP Pikoli
 Copy 2: PCLU File*

3. The PCLU was created by Mr Ngcuka in 2003 as a special directorate in his office. The President formally established the unit by way of a proclamation which mandated it to manage and direct investigations and prosecutions into:

3.1 Serious international and national crimes which impact on State security;

3.2 Prosecutions arising from the Statute of Rome;

3.3 Specific cases referred by the NDPP on an *ad hoc* basis.

4. I was appointed as the Special Director in charge of the unit. The unit had no investigative capacity and therefore was reliant in this regard on both SAPS and the DSO. The NDPP appointed DDPP's Macadam and Pretorius to assist me.

5. Shortly after my appointment, my deputies and I had meetings with Commissioner de Beer, the Divisional Head of the Detective Service and his legal advisor, Assistant Commissioner Jacobs to appraise them of my unit's mandate and to establish a working relationship between the Detective Service and my unit. This meeting was extremely cordial and Commissioner Jacobs drew my attention to certain cases involving trafficking in conventional arms which were under investigation by SAPS. He informed me that the Conventional Arms Control Body had expressed its concern that no prosecutions had been instituted and the DPP's appeared to be unable to properly deal with the cases. The cases in question were drawn by my office and shortly thereafter, prosecutions instituted.

6. I also introduced the unit to the DSO.

7. Shortly thereafter, Mr Ngcuka informed me that my unit should take over the management of TRC investigations and prosecutions from the DSO. I am informed that this decision was based on the following background:

7.1 Shortly after his appointment, Mr Ngcuka created a Human Rights Unit in his office, headed by a DDPP (Mr Brink Ferreira) to deal with such cases.

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7.2 For various reasons, this unit had been unable to discharge its mandate and in 2001, Mr Ngcuka had transferred the cases to the DSO. Mr Ngcuka was adamant that all the TRC matters had to be investigated by the DSO and not SAPS.

7.3 As a consequence of this decision, the DSO requested Commissioner de Beer to conduct an audit of all TRC cases carried by SAPS and to refer the cases in question to the DSO. SAPS was perfectly amenable to this request as is confirmed from the attached documentation relating thereto.

7.4 The DSO had only a small number of investigators in its head office available to conduct all the investigations which were necessary and this limited any progress which could be made. Only a handful of cases were finalized where decisions were made not to prosecute.

7.5 At this point in time, the final report of the TRC had not been released and there was widespread speculation that the President was intending to declare an amnesty for further prosecutions. As a result, it was felt that it would be inappropriate to institute prosecutions before the report was released and the President had responded thereto.

7.6 Shortly after the creation of the PCLU (April 2003), the report became available and the President, in a public statement, ruled out any form of further amnesties. He specifically mandated the NDPP to proceed with prosecutions according to normal practices.

8. During May/June 2003, I immediately conducted an audit of TRC cases on hand and a presentation was given to Mr Ngcuka and his deputies. I had identified certain cases warranting prosecution, as well as a number of matters which required further investigation. Mr Ngcuka and his deputies were satisfied with my presentation and I was given the go-ahead to proceed.

(Annexure "A")

9. I however ran into considerable difficulties in obtaining the necessary legal authorizations for

investigations from Adv Ledwaba (who was Head of the DSO's operations). In addition, the DSO investigators complained that they required access to SAPS dockets and personnel to conduct the necessary investigations and that SAPS was reluctant to assist them. This related to investigations against members of the security forces. As far as investigations against APLA and MK were concerned, these were being dealt with by a Director and Senior Superintendent from SAPS, who reported to Adv Fick SC, a DDPP in Adv Mpshe's office.

(Annexure "B")

10. As a result of the above difficulties, I met with Commissioner de Beer and requested him to take over the TRC cases dealt with by the DSO. He requested me to put my request in writing, as he indicated that this matter would have to be discussed with Commissioner Selebi. After I put in my request, he, in writing, advised me that SAPS would not investigate, unless the President authorized it to do so. There was however no objection to SAPS continuing with the APLA and MK investigations. Relevant correspondence is attached hereto.

(Annexures "C", "D" and "E")

11. I appointed DDPP Macadam to focus on the DSO cases, while I dealt with the SAPS cases. Both Macadam and I disposed of a large number of cases on the basis that there were no grounds to prosecute. Macadam however had identified a small number of cases involving security branch members, but informed me that he could not prosecute these matters, as he had dealt with the accused while he was a member of the TRC. In addition, I believed that a prosecution relating to the attempted poisoning of *Rev Chikane* was also justified and that it would be inappropriate for any person other than myself to conduct the prosecution because of the links to the *Wouter Basson* matter which I personally had dealt with. I therefore decided to deal with all these matters myself. I appointed Macadam to deal with the *Biani* matter which SAPS had informed me justified prosecution.
12. Due to the fact that the security branch cases were ones where amnesty had been refused, I informed the suspects' attorney of my intention to institute proceedings so that any review of the amnesty process could be dealt with expeditiously. During the course of the discussions, I was informed by the attorney that he acted for a group of former police generals, who were

- protecting the interests of any security branch member faced with prosecution. In this context, he informed me that a solid case had been prepared, implicating the President on a charge of terrorism, linked to the MK landmine campaign. The two SAPS members dealing with the APLA and MK cases also informed me that there was a case against the President. It was clear to me that the case against the President was being relied on to intimidate the NPA and not prosecuting security branch members. Due to the fact that neither the lawyer in question nor the SAPS members could on any occasion produce a docket containing evidence implicating the President, I instructed Macadam to go through all the relevant TRC evidence in order to establish whether there was any merit in the allegations against the President. Mr Ngcuka was at all times informed of these developments.
13. Due to the difficulties encountered with the DSO, my two deputies and I met with Commissioner Lalla to inform him of my unit's mandate and to request him to channel any intelligence relating to the cases to my unit. During the course of these discussions, I did express my dissatisfaction with the DSO and informed him of the allegations being made against the President. Macadam also asked his assistance concerning the *Motherwell* case where the accused were alleging that the deceased had been killed because they were MK operatives. As I subsequently discovered, this conversation was clandestinely recorded both on audio and video.
 14. At a later stage, my two deputies and I were at short notice summoned to a meeting with Mr Ngcuka. Mr Ngcuka informed me that Commissioner Selebi had addressed a meeting of the Directors General and alleged that Mr Ngcuka was preparing to have the President and six generals arrested and charged with terrorism. Mr Ngcuka further informed me that Commissioner Selebi was in possession of a video recording in which I had admitted that the President was due to be arrested. I was then shown the video recording of my meeting with Commissioner Lalla and this was how I learned that the meeting had been recorded.
 15. Mr Ngcuka further informed me that Commissioner Selebi had complained about the NPA being in possession of SAPS dockets. Apparently, the allegation was that these dockets contained the evidence that would be used to prosecute the President and other high profile

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ANC leaders. I denied the existence of both an attempt to arrest the President and others as well as the existence of the so-called relevant police dockets against them. Mr Ngcuka then made arrangements for you and three police commissioners to be present at Adv Mpshe's office the next day for an inspection of the dockets to be carried out.

16. At Adv Mpshe's office, Mr Ngcuka invited SAPS to identify the dockets relating to the President and others, which they were unable to do. Mr Ngcuka then instructed the SAPS Commissioners to have all the SAPS dockets removed forthwith and for the two SAPS members working with Adv Fick to vacate their office at the DPP's premises.
17. Shortly thereafter, Minister Maduna personally visited Mr Ngcuka, myself and Macadam and was fully briefed on all these developments. Macadam had compiled a report to Mr Ngcuka in which he had expressed the opinion that having perused all the relevant TRC material, there was no case against the President or the other prominent ANC members who had been refused amnesty. A copy of the report is attached hereto. Minister Maduna also satisfied himself and said that the allegations made by Commissioner Selebi were untrue and undertook to inform the President accordingly.

(Annexures "E" and "F")

18. While I was absent from the office, I was informed by Macadam that Mr Ngcuka had summoned him to a meeting with Mr Billy Masetla. I was further informed that the purpose of the meeting was to satisfy the Office of the President that there was no intention to prosecute the President. Macadam finally advised me that he had given Masetla a copy of his report and that he was satisfied with the manner in which the manner had been dealt with.
19. I was angry that Commissioner Lalla had clandestinely recorded a confidential meeting and in my personal capacity, sent him a letter in which I expressed my feelings. I heard nothing further from him.

(Annexure "H")

20. Thereafter, Mr Ngcuka resigned and Dr Ramaite was appointed as the Acting NDPP.

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21. As a result of pressure to deliver on the TRC matters, I decided that it was important to institute a prosecution relating to the attempted poisoning of Rev Chikane. On the eve of the arrest of the suspects, I was informed by Dr Ramaite that their arrests should be placed on hold until further notice. Shortly thereafter, I was informed that guidelines had to be formulated and incorporated into the NPA's general policy and procedure before any further prosecutions arising from TRC matters could be instituted.
22. Shortly thereafter, Dr Ramaite informed me that he had attended a meeting in Cape Town with the Minister of Justice & Constitutional Development, other Cabinet Ministers and Commissioner Selebi. He further informed me that Commissioner Selebi had alleged that the NPA was planning to paralyse Government by arresting a large number of prominent Government officials who had previously been involved in MK activities. As a result, Dr Ramaite submitted a comprehensive, secret internal memorandum to the Minister, explaining in detail how the NPA was managing TRC cases and denying the allegation made by Commissioner Selebi. It is believed that Commissioner Selebi had sight of this report.

(Annexure "I")

23. Due to delays with the finalization of the processes necessary before the guidelines could be implemented, no significant work was done on TRC prosecutions in 2005.
24. In the latter part of 2005 however, it was publicly announced that the President had appointed a commission to establish whether the DSO should be incorporated into SAPS. I was approached by the NPA's legal advisor, Gerhard S Nel, and informed that Commissioner Selebi had submitted an affidavit to the Commission in which he had made several allegations against the PCLU and had in essence recommended its closure. I was required by Mr Nel to respond to these allegations insofar as they related to the PCLU, which I did. I also attended the sittings of the commission and also discussed certain of the allegations with Deputy National Commissioner Pruis and Commissioner de Beer. It appeared to me that Commissioner Selebi was under the impression that the PCLU was in some way part of the DSO.

(Annexure "J" – first 9 pages)

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25. In early 2006, the guidelines were finally implemented and you instructed me to proceed with prosecutions. The guidelines make provision for the PCLU to be assisted by representatives of SAPS, NIA and the DSO.

26. Prior to the implementation of the guidelines, you had advised me to convene a meeting of these role players so as to inform them of the nature of the guidelines which were due to come into effect. Under your name, an invitation was extended to all the role players. However, only the DSO representative attended the meeting.

(Annexure "K1")

27. After the guidelines had been implemented, you again requested the relevant State departments to nominate officials as contemplated by the guidelines.

(Annexure "K2" – NIA invitation)

28. I also met with Adv Mngwengwe, who agreed that SAPS could take over the TRC cases currently with the DSO. I also had a series of discussions with Commissioner de Beer in order to arrange for SAPS to take over all these TRC cases. In the course of these discussions, I gained the impression that Commissioner de Beer was not opposed to doing so, but that he required higher authority before he could agree to do so. In follow-up discussions, it appeared that there was now some reluctance on the part of SAPS to take over these cases, which was not the case when I originally had spoken to Commissioner de Beer.

29. Eventually, at the request of Commissioner de Beer, I compiled a letter for you to submit to Commissioner Selebi, outlining all the cases which required investigation and requesting him to have the necessary investigators appointed. I have not had sight of a reply from him and only learned from you that he had at this meeting expressed his reluctance to cooperate with the PCLU and made other specific allegations against me.

(Annexure "L")

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30. I must confess to being taken aback by these allegations and deal hereunder with the specific ones which you brought to my attention:

30.1 "The chasing away of NIA from my office"

I am not aware of such an incident and deny that such an incident has ever taken place. The only time I have met with a NIA official was on 27 February 2006 at ±11:45 in my office at the VGM Building in Weavind Park. This meeting occurred as a result of an invitation the PCLU had extended to NIA to discuss the implementation of the TRC guidelines.

(Annexure "K1")

NIA failed to send a representative to the first meeting. After approval of the TRC guidelines by the Portfolio Committee of the Department of Justice & Constitutional Development, the PCLU once again addressed a letter to NIA to discuss the possible assistance that NIA could render to it in the prosecution of perpetrators. As already stated, this meeting took place on 27 February 2006.

I stand to correction, but my recollection of this meeting is as follows:

- (i) The meeting was scheduled for 11 am;
- (ii) The representative of NIA was Ms Yvonne Mabule;
- (iii) She arrived at plus-minus 11:45;
- (iv) I provided her with a brief background which had led to the drafting of the guidelines;
- (v) I also provided her with a copy of the guidelines and referred her specifically to par B6, in which it is stated:

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"The PCLU shall be assisted in the execution of its duties by a senior designated official from the following State departments or other components of the NPA:

- (a) The National Intelligence Agency.*
- (b) The Detective Division of the South African Police Service.*
- (c) The Department of Justice & Constitutional Development.*
- (d) The Directorate of Special Operations."*

- (vi) I am quite certain that I would have stressed the point that the final decision on whether to prosecute or not is vested in the NPA;
- (vii) She informed me that NIA would only be interested in matters which threatened national security;
- (viii) At that point in time, I showed her a draft letter addressed to Commissioner Selebi, setting out the relevant cases under investigation. I am not sure whether I have provided her with a copy of the letter.

(Annexure "L")

- (ix) I think that I also informed her that the only case that came to mind, which could negatively have influenced the security of the Republic, was the Powell case which involved alleged arms caches in KwaZulu-Natal.
- (x) I can also recall that I cautioned her to keep the intelligence operations separate from police investigations to avoid any legal challenges.
- (xi) This meeting was very cordial and tea or coffee was served during the discussions.
- (xii) The meeting lasted at least 45 minutes.

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- (xiii) The only indication that could have created the perception of "*chasing her out of my office*" was the fact that according to my diary, I had another appointment at 13h00 with one Sophie Matemane. Although I might have been in a hurry at this point in time, I never "*chased her out of my office*".
- (xiv) I am quite certain that a *verbatim* recording of the meeting could be obtained from NIA.

30.2 The reluctance of SAPS to cooperate with Ackermann/PCLU relating to TRC matters
My staff and I have had numerous meetings and dealings with SAPS members in connection with TRC matters and on not one occasion have we been informed of any such reluctance, nor am I in receipt of any written communication from SAPS in which such sentiments are expressed. In fact, on more than 10 occasions, Commissioner de Beer informed me that he was more than willing to provide investigators, but that he required the permission of Commissioner Selebi. In at least three cases, investigators have already been earmarked to commence investigations once the required permission has been obtained. Since 2003, all the non-TRC matters have been dealt with by a specialised SAPS unit, headed by Senior Superintendent Bester. Commissioner de Beer also informed me that Senior Superintendent Bester and his unit should also be involved in the investigation of the TRC matters. I have discussed these matters with Senior Superintendent Bester and some of his investigators and none of them have expressed any reluctance to investigate these matters, nor to work with me or the members of the PCLU. It would therefore appear that the only source of reluctance to investigate TRC cases, emanates from Commissioner Selebi.

30.3 As a result, I can see no reason for SAPS not to cooperate with the PCLU in the investigation and prosecution of TRC matters. My staff and I have a more extensive knowledge of such matters than the DPP's offices. In the numerous discussions concerning these matters between myself and the DPP's they have expressed their difficulties in dealing with these cases and have welcomed the PCLU playing the role set out in the guidelines. It also makes sound sense to centralize all these matters in

your office so as to ensure consistency in decision making and to fast track investigations and prosecutions.

30.4 The criminal charge against myself

I was shocked to be informed by Commissioner de Beer that I had been implicated by De Kock and another Vlakplaas operator, Snyman as having attempted to protect Director Human of SAPS who had been accused of ordering the murder of an Askari. I established that these allegations related to a docket which had been opened in Mpumalanga in respect of the shooting of the Askari by Captain Koekemoer of the Murder & Robbery Unit. The original docket had been submitted to a Magistrate to hold an inquest and the Magistrate had accepted Captain Koekemoer's version that he had acted lawfully in self-defence. I furthermore established that thereafter, an amnesty application had been held where Snyman had implicated Director Human, who was the former Head of the D'Oliveira Investigation Unit, which had investigated a number of cases against the security branch and Adv de Jager, who was a deputy in Dr D'Oliveira's office and involved in overseeing these investigations. The amnesty record shows that the allegations involving Human and De Jager were investigated and that there were discrepancies between the versions of Snyman, De Kock and another Vlakplaas operator. I was in no way implicated in this hearing. I was at no stage involved in the investigation of this incident. I have been informed that this incident was one of several cases in which a decision was taken not to prosecute by Dr Ramaite, when he was the DPP, Pretoria, acting on the advice of a Senior Deputy and Senior State Advocate. This decision had also been confirmed by Mr Ngcuka. I have made a statement to the investigating officer in which I in detail denied the allegations. My office also assisted the investigating officer by handing over documentation which was relevant to the investigation. I therefore regard the allegations by De Kock and Snyman as false. I am quite sure that a perusal of the evidence will confirm this. Warning statement is attached.

(Annexure "M")

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31. Alleged acrimony between the National Commissioner and myself

I have had no direct confrontations with Commissioner Selebi and in fact, I have never had any personal dealings with him. I can only speculate as to the reason for the alleged animosity.

31.1 It would appear that Commissioner Selebi has an obsession concerning a non-existent attempt on my part to prosecute the President and other prominent ANC leaders. It may be that he was placed in an embarrassing position as a result of his original allegations which were disproved and this coming to the attention of both Minister Maduna and Mr Masetla, whom I take it, would have reported it to the President. See also the Secret Internal memorandum addressed to our Minister, especially pages 4 – 9.

(Annexure "I")

31.2 I was informed that there was ill feeling between Mr Ngcuka and himself and I can again speculate that I was perceived as being an ally of Mr Ngcuka.

31.3 It would also appear that he erroneously believes that the PCLU is part of the DSO and his feelings concerning the DSO are a matter of public record. My involvement in the Khampepe Commission may also be held against me.

(Annexure "J")

31.4 In certain matters accorded a high profile by SAPS, my unit declined to prosecute. In one such matter, the suspect has instituted a multi-million rand suit against SAPS and Justice. In another matter, he requested that the docket not be read by my staff member, but by persons in the DPP Office, Pretoria. The DDPP who read the docket also agreed that there were no grounds to charge the suspects and eventually, the complainant also accepted that there was no such case.

31.5 In certain cases, members of my staff have complained about poor police investigations. These complaints however were always done in a constructive manner

and not intended to in any way damage SAPS.

- 31.6 I was invited to address the Controlling Body concerning problems with prosecuting South Africans performing security services in Iraq. He attended this meeting and alleged that the NPA was dragging its heels on these matters. Dr Ramaite submitted a detailed letter to him, pointing out that this claim was unfounded. A copy of this letter was also submitted to the political heads who attended the meeting.
- 31.7 A combination of the above.
32. In the short period of its existence, I believe that the PCLU has proved its worth and achieved considerable success in the fields of:
- 32.1 Nuclear proliferation;
 - 32.2 Chemical and biological warfare proliferation;
 - 32.3 Conventional arms control;
 - 32.4 Mercenary activity.

In several of these matters the cases have been investigated by SAPS and the PCLU has always given it credit for its work. On an *ad hoc* basis, my staff members have worked long hours of overtime to assist individual police officers in obtaining search warrants and with other complicated investigations.

33. I have, on more than one occasion, spoken to Commissioners De Beer and Pruis and suggested that we meet informally to resolve any differences which may exist between SAPS and the PCLU. After you had informed me of Commissioner Selebi's latest allegation, I also wrote to him, requesting a meeting to discuss the matter. As of the date of this letter, I have not received a reply from him.

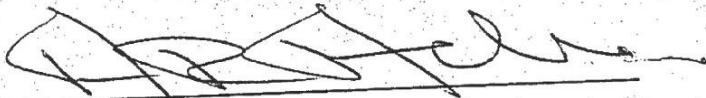
(Annexure "N")

34. Despite this "animosity", my staff and I are perfectly willing to work with Commissioner Selebi

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and with SAPS. I believe that this will be to the benefit of our country, as the PCLU's short record to date establishes that when it teams up with SAPS, a significant inroad into combating crime is achieved. I believe that both SAPS and the NPA should have the same object of combating crime and not acting in opposition to each other.

Kind regards



AR ACKERMANN

RCMY

017-5 003-0223

SAP 21

SUID-AFRIKAANSE POLISIEDIENS



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2003-09-26

Advocate AR Ackermann, SC
Special Director
Head: Priority Crimes Litigation Unit
National Prosecuting Authority
Church Square
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Dear Advocate Ackermann

INVESTIGATION OF TRC CASES

Your letter dated 20 August 2003, as well as the preceding discussion between ourselves, have reference.

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

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard."

You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with the DSO.

[Handwritten signatures and initials]
JMY
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NGT

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

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

You are therefor requested to approach the President on the matter, where after we can take the matter further, if necessary.

Kind regards.


DIVISIONAL COMMISSIONER: DETECTIVE SERVICE
JF DE BEER



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