

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS
AND/ OR PROSECUTIONS**

INDEX: CALATA GROUP BUNDLE TO CROSS-EXAMINE GENERAL R LALLA

NO	DESCRIPTION	PAGE NO
LALLA CROSS EXAMINATION BUNDLE		
1.	Calata Group application to cross examine General Lalla	1 to 7
2.	Incomplete memorandum from Acting NDPP to Minister of Justice and Constitutional Development <i>re Management of TRC Cases by the NPA</i> dated 14 December 2004	8 to 13
3.	Secret Report of the Amnesty Task Team (Calata Group Bundle Volume 1: Lukhanyo Calata pp 515 to 526)	14 to 25
4.	Further Report of the Amnesty Task Team (Calata Group Bundle Volume 1: Lukhanyo Calata pp 344 to 347)	26 to 29
5.	Appendix A to the Prosecution Policy (Calata Group Bundle Volume 1: Lukhanyo Calata pp 537 to 542)	30 to 35
6.	Letter from Adv RC Macadam to Divisional Commissioner Lalla dated 4	36

	June 2003 (Bundle 8: Adv RC Macadam p 1472)	
7.	Ackermann SC Commission of Inquiry affidavit dated 25 October 2025 (Calata Group Bundle Volume 3: Anton Ackermann pp 19 to 30)	37 to 48
8.	Memorandum from Ackermann SC to Adv VP Pikoli dated 16 May 2006 (Ackermann additional bundle pp 7 to 21)	49 to 63
9.	Extracts from transcript of Adv Ackermann SC dated 4 March 2026 (Transcript p 80 to 86)	64 to 71
RELEVANT COMPLETE BUNDLES		
1	Bundle 14: Gen Lalla	https://www.trc-inquiry.org.za/wp-content/uploads/2026/04/BUNDLE-14-ADV.-R.-LALLA-UPDATED.pdf
RELEVANT COMPLETE TRANSCRIPTS		
1	Gen Lalla transcript of 10 April 2026	https://www.trc-inquiry.org.za/wp-content/uploads/2026/04/Day-30-Mr.-R.-Lalla-10-04-26.pdf

1

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS AND/
OR PROSECUTIONS**

STATEMENT: APPLICATION TO CROSS-EXAMINE

I, the undersigned.

ASMITA THAKOR

do hereby make oath and state that:

1. I am an adult female attorney practising as a Partner at Webber Wentzel at 90 Rivonia Road, Sandton. I am the attorney of record for the families and survivors of apartheid-era crimes (known as the "**Calata Group**").
2. The facts contained in this statement are within my own personal knowledge unless the context indicates otherwise and are to the best of my knowledge true and correct.
3. I depose to this statement on behalf of my clients, including Adv Anton Rossouw Ackermann ("**Adv Ackermann**"), who we represent in these proceedings. I am duly authorised to do so.
4. This statement is made in support of an application in terms of Regulation 8(3) of the Commission's Regulations, read with Rule 3.7 of the Commission's Rules to cross examine General Rayman Lalla ("**Gen Lalla**").

THE APPLICATION

5. Gen Lalla has filed two statements with the Commission:
 - 5.1 The statement dated 4 November 2025 ("**November 2025 Statement**" or "**first statement**" or "**statement 1**"), and
 - 5.2 The statement dated 8 April 2026 ("**April 2026 Statement**" or "**second statement**" or "**statement 2**").

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6. Our clients wish to put questions to Gen Lalla in relation to the following aspects arising from his statements and his testimony before the Commission on 10 April 2026:

The Amnesty Task Team (ATT)

7. Gen Lalla was appointed to the ATT as the SAPS representative.
8. In relation to the ATT meeting Gen Lalla attended, we would like him to answer questions in respect of the following references in his first statement:
 - 8.1 “given the nature of the matters presented as they were about the legal approach to the rules and procedures envisaged.”
 - 8.2 The statement by Dr Jacobs “that SAPS did not have a single docket or Inquiry of TRC related cases. These were all In the hands of the NDPP. Further, if the mandate was to be changed it would require steps to be taken by Parliament, the Executive and the DoJ.”
9. We seek his views, as a former national head of Crime Intelligence and national head of Detective Services, on the:
 - 9.1 Creation by the executive of the ATT, (comprising members of the ATT, NIA, DOJ, NPA, SAPS and DOD) to *inter alia* propose new criteria for prosecution decisions in respect only of the TRC cases, which were mostly murders and kidnappings.
 - 9.2 The creation by the ATT of a Departmental Task Team (including a member of the President’s Office) to advise it on a process to decide on the advisability of a prosecution in each TRC case; and a possible further amnesty.
 - 9.3 The directive by the Directors General Forum to the ATT to advise it on whether there is a way in which private prosecution and civil litigation can be eliminated if the NDPP decides not to prosecute any TRC case.

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The approach by Adv Macadam in 2009 for investigators for the TRC cases

10. We would like Gen Lalla to respond to questions arising from paras 306 to 314 of the Calata Affidavit (also reproduced in the Rule 3.3 Notice) dealing with the plea by the NPA to SAPS for investigators to handle the TRC cases. Questions include:
- 10.1 Gen Lalla's response to the fact that by 2009 the NPA was still struggling to secure investigation officers for the TRC cases.
- 10.2 His response to Adv Macadam's statement at para 309: "We have been taking quite a beating due to the fact that nothing has been done on these matters for a number of years and in fact, in certain cases the victims are threatening us with *mandamus* applications."
- 10.3 Whether he has any knowledge how the investigator, Senior Superintendent Bester, appointed in late 2009 to investigate TRC cases was selected.

Denial that the NPA brought any TRC docket or inquiry to him

11. In his November 2025 statement Gen Lalla states that:

*"At no stage during the whole of my SAPS career, spanning the period 1995 to 2011, did either the DoJ or NDPP bring any TRC docket or specific Inquiry to my personal attention."*¹

12. Gen Lalla is requested to respond to Adv Macadam's statement before the Commission that on 4 June 2003 he wrote to Gen Lalla requesting assistance with TRC-related matters. This letter is attached as "AD9" to Adv Macadam's statement.²
- 12.1 The first matter raised with Gen Lalla was the allegation that Ms Mandela took part in the killing of Chris Hani and assistance was sought in identifying an informant.

¹ Statement of R, Lalla, November 2025, para 6

² Statement of R.C Macadam, p 9 at para 31.5; Statement of R.C Macadam, Annexure "AD9", p 45 of Annexures Bundle.

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- 12.2 Requests to Gen Lalla for Security Branch records in relation to the Motherwell Bombing / Brian Ngqulunga / De Kock / General Nick van Rensburg investigations.

The meeting between Gen Lalla, Adv Ackermann, Adv Macadam and Adv Pretorius on 25 August 2003.

The details of the meeting

13. Gen Lalla confirms in his April 2026 statement and his evidence before this Commission that the meeting took place. However, he did not elaborate on the reason for the meeting and the details of what was discussed.
14. Adv Ackermann confirms that the purpose of the meeting was to advise Gen Lalla that the Priority Crimes Litigation Unit ("PCLU") was struggling to get investigators for the TRC cases and to try and resolve the impasse.³
15. In particular Adv Ackermann expressed his dissatisfaction with the DSO and informed Gen Lalla of the allegations being made against the President.⁴ Ackermann voiced his "*frustration and disgust with the refusal of the DSO to take on the TRC cases*".⁵
16. Adv Ackermann's version of the meeting was not put to Gen Lalla. We wish to do so.

The recording of the meeting

17. Gen Lalla also confirms that he recorded the meeting, without the knowledge or consent of Adv Ackermann, Adv Macadam and Adv Pretorius.
18. Gen Lalla stated that he recorded the meeting for the following reasons:

MR LALLA: Historically, when it came to investigation of cases, there was a lot of confusion about who is investigating what, who is investigating what. So, I am now the head of Crime Intelligence, and I questioned myself, that why am

³ Statements - NPA - PCLU - Ackermann - Documentary Evidence - Ackermann to Pikoli 16 May 2006 NIA incidents: <https://share.google/qdINleNdltniANnLE>

⁴ Id at para 14. See also transcript DAY 17- 04-03-26 at pages 47 – 50. <https://www.trc-inquiry.org.za/wp-content/uploads/2026/03/Day-17-Adv.-Ackermann-04-03-26.pdf>

⁵ Calata Group Volume, Bundle 3, p 21, at para 9.

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I being asked about this structure because, I understood it as the PCLU was going to look for investigative capacities within the NDPP, NPA and within SAPS.

And on the basis of that I recorded the meeting, because there was multiple misinformation, disinformation of how structures are working, or whether people can interfere in prosecutions or not interfere in prosecutions, and so there was a lot of confusion around that.

So, on the basis of that I thought it is best that record the meeting, so when I communicate to my subordinates, I am in a position to tell them categorically where to operate, what is the parameters of operation and where to back off.

Because very often people will leave our office and be able to communicate adverse things as if we agreed with them, and that was the sum total of my experience when we dealt with the violence in KwaZulu-Natal. One adversary or the other will come and want to represent the story as if the police agrees with them.⁶

19. In his evidence, Gen Lalla explained that he informed the then National Commissioner Jackie Selebi ("**Commissioner Selebi**") about the recording in a telephone conversation. He states that Commissioner Selebi telephoned him to discuss another matter (related to anthrax).

MR LALLA: Some months later, I do not know, a year or a month later, but I think it is some months later if I look at the date, I was called by the then National Commissioner, who spoke to me about another aspect I was dealing with the Foreign Law Enforcement Agency in regards to anthrax dispatch. And then he said, by the way ...

MR LALLA: ... Okay, the National Commissioner was Commissioner Selebi, so it was a telephonic conversation. I said to him, you know what, I do not want to go into details with who said what, but I said I did record the meeting, here is the recording. He is my accounting officer, and he should know the truth, and I gave him the recording, well, somebody in my staff gave him the recording.

20. The explanation offered by Gen Lalla is cryptic. Since the TRC cases had nothing to do with the anthrax matter, we wish to ask Gen Lalla to explain the connection or provide the missing information which prompted him to offer the recording to Commissioner Selebi.
21. We wish to put the following to Gen Lalla and get his responses:

⁶ Transcript DAY 30 -- 10-04-26 R LALLA

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- 21.1 Commissioner Selebi must have raised the claim that the PCLU was investigating the ANC leadership.
- 21.2 Since Adv Ackermann had raised the “allegations against the President”⁷ this likely prompted Gen Lalla to mention the meeting and recording.
22. We wish to put it to Gen Lalla that his decision to hand over the recording to Commissioner Selebi:
- 22.1 had nothing to do with his reason for the recording, namely preventing misinformation or preventing confusion or disagreements arising from what was said at the meeting.
- 22.2 it was rather handed over to assist his superior officer, Commissioner Selebi, to pursue his agenda in relation to the handling of the TRC cases, and
- 22.3 that he likely knew that Commissioner Selebi would use the recording against Ackermann and the PCLU.
23. We wish to ask Gen Lalla whether he was aware that Commissioner Selebi was playing a central role in the efforts to close down the TRC cases – in particular the cases against the former apartheid regime, to prevent cases being pursued against the ANC leadership.

Gen Lalla's characterisation of Adv Ackermann

24. In his evidence, Gen Lalla states that Adv Ackermann suffered a “breakdown” during the meeting of 25 August 2003. This was not mentioned in Gen Lalla’s two statements.
25. Gen Lalla’s characterisation is at odds with Adv Ackermann’s account of the meeting. Adv Macadam in his evidence also makes no mention of this.
26. We wish to put it to Gen Lalla that he is confusing Adv Ackermann’s robustness and frankness with a broken emotional state. To the extent that Gen Lalla persists with

⁷ Transcript DAY 17- 04-03-26 at pages 47 – 50. <https://www.trc-inquiry.org.za/wp-content/uploads/2026/03/Day-17-Adv.-Ackermann-04-03-26.pdf>

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this claim, we will put it to him that it was made improperly to impugn Adv Ackermann's character and credibility.

CONCLUSION

- 27. The issues outlined above lie at the heart of the Commission's terms of reference and must be contested through cross-examination.
- 28. It is in the best interests of the work of the Commission that the Calata Group's Counsel be permitted to cross-examine Gen. Lalla.
- 29. In the light of the above, I humbly request the Chairperson to permit the Calata Group's counsel to cross-examine Gen. Lalla.



ASMITA THAKOR

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Sandton on 14 April 2026 2026, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

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DATE: 14 April 2026



The National Prosecuting Authority of South Africa
 Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
 Die Nasionale Vervolgingsgesag van Suid-Afrika

SECRET INTERNAL MEMORANDUM

TO : MINISTER FOR JUSTICE AND CONSTITUTIONAL
 DEVELOPMENT

FROM : ACTING NATIONAL DIRECTOR OF PUBLIC
 PROSECUTIONS

SUBJECT : MANAGEMENT OF TRC CASES BY THE NPA

DATE : 14 DECEMBER 2004

REF NO. : 3/2/P (PCLU)

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to—

- (a) respond to allegations made at a meeting with certain Cabinet Ministers and the National Commissioner of the Police Service regarding the management of TRC cases by the National Prosecuting Authority (NPA);
- (b) to dispel any other misconceptions relating to such cases;
- (c) provide the Minister with a progress report regarding the status of these cases; and
- (d) supply the Minister with the NPA's comment on the proposed guidelines relating to the handling of the TRC cases.

2. HISTORICAL BACKGROUND

- 2.1 After the closure of the Goldstone Commission in 1993/94 the government of the day decided that its work in investigating human rights abuses relating to conflicts of the past should continue under the supervision of the then Attorney General of Pretoria, Dr Jan D'Oliveira, SC. A team of members of the SA Police Services (SAPS) were seconded to his office to conduct the necessary investigations. (Annexure A)
- 2.2 The team was divided into two groups. One focusing on offences committed by security force members and the other group focussing on offences committed by members of the Liberation Movements and the Right Wing.
- 2.3 The latter team comprised of Director Nel and Senior Superintendent Britz of SAPS.
- 2.4 Dr D'Oliveira directed that Deputy Attorney General Paul Fick would supervise all the investigations conducted by the two police officers, while he would deal with cases involving security force members.
- 2.5 On 7 November 1996 the former National Commissioner (JG Fivaz), at the request of Dr D'Oliveira, instructed all Provincial Commissioners to submit all outstanding and unsolved cases pertaining to the entire political spectrum of the conflicts of the past to Dr D'Oliveira's office. Such instruction also related to cases where not all the accused had been prosecuted. (Annexure B)
- 2.6 With the appointment of the National Director of Public Prosecutions (NDPP) in 1998, the cases dealt with by Dr D'Oliveira were transferred to the Office of the NDPP, while Adv Fick continued to deal with the cases originally allocated to him i.e. the Liberation Movement cases. He continued to be assisted by the SAPS members, Nel and Britz. Their contracts were routinely extended by SAPS.
- 2.7 The NDPP however instructed Adv Fick not to institute any prosecutions without his authorisation and no prosecutions were therefore instituted.
- 2.8 With the creation of the Directorate of Special Operations (DSO) in 2000, the cases at the NDPP's Office were transferred to the Head Quarters of the DSO. Adv Fick, however, continued with his cases assisted by the two police officers. Although a number of investigations had been conducted, no prosecutions were instituted, because the TRC's final report, and the President's response thereto, were outstanding.
- 2.9 After the TRC had tabled its final report and the President had mandated the NDPP to institute prosecutions where appropriate,

arising from the TRC process, the NDPP assigned all TRC matters to the Priority Crimes Litigation Unit (PCLU), which Unit was created by the President in March 2003.

- 2.10 The PCLU was not an investigative agency and was therefore dependant on SAPS and the DSO to assist with the investigations. The PCLU reports monthly to a Deputy National Director. The NDPP approved all its decisions to institute TRC prosecutions and, in certain high profile cases, certain decisions not to prosecute. Proper records are kept of all its cases.

3. MANAGEMENT OF TRC CASES BY THE PCLU IN MARCH 2003

- 3.1 The DSO policy guidelines for prosecutions in these matters were accepted by the PCLU. In essence, these were to the effect that prosecutions should only be instituted for serious human rights abuses, based on reliable evidence while accepting that humanitarian factors and the interests of reconciliation could also be taken into consideration.
- 3.2 It was decided that the Head of the PCLU would take over Adv Fick's cases and the Deputy Head of the PCLU would take over the DSO cases.
- 3.3 The PCLU conducted an audit of all the cases in both offices.
- 3.4 In this auditing process it was established that the police officers at Adv Fick's office (the office of the Director of Public Prosecutions, Pretoria) had registered 395 police dockets.
- 3.5 The register (Annexure C) reflected that in the main, cases had been closed. Either because the accused had been granted amnesty or the perpetrators had not been detected. The outstanding cases are listed in Annexure C.
- 3.6 Of these cases, which were still open, the PCLU declined to prosecute about 90 cases on the same basis as mentioned above. In respect of each decision taken, a full report was compiled.
- 3.7 Similarly, about 60 cases from the DSO were finalised. The only outstanding cases are those mentioned in paragraphs 9.1 to 9.6 and 9.8 to 9.10 *infra*.
- 3.8 The audit process further identified a small number of cases warranting prosecution which are dealt with hereunder.

4. MATTERS ARISING

4.1 SAPS INVOLVEMENT PERTAINING TO TRC INVESTIGATIONS

4.1.1 During 2003 a number of meetings were held with Commissioner De Beer (the Divisional Head of the Detective Service) requesting the assistance of SAPS in the investigation of TRC cases other than those dealt with by Nel and Britz.

4.1.2 Specific assistance was sought in the following high profile cases where members of the Liberation Movement were targeted by the former security forces:

- Pebco 3
- Cradock 4
- Motherwell Bombing
- Cosas 4
- Murder of Brian Ngulunga
- Murder of Ntombi Khubekha
- Murder of Victoria Mxenge
(See Annexure D)

4.1.3 On 26 September 2003, Commissioner De Beer advised the PCLU that, having discussed the request with the National Commissioner, no such assistance would be rendered, without the express written instruction of the President. His motivation was that the suspects in the above cases were all ex-policemen (see Annexure E).

4.1.4 The perception unfortunately created by this decision is that SAPS was only interested in targeting members of the Liberation Movement.

4.1.5 This perception was reinforced by the manner in which SAPS dealt with the **Biani** and **ANC-37 cases**, which will be dealt with hereunder.

4.2 ANC-37 CASE

4.2.1 The TRC refused amnesty to 37 prominent leaders of the ANC, including the President, Mr Thabo Mbeki.

4.2.2 Members of the PCLU held various discussions with Nel and Britz during which discussions Nel and Britz persisted that that there was a strong case against the President and other prominent cabinet ministers. This was raised in the context of attempting to persuade the

PCLU not to prosecute former security branch members on the basis that, if such members were prosecuted, the President would have to be prosecuted as well.

- 4.2.3 They claimed that the basis of the charge against the President was the so-called minutes of the Lusaka meeting where the President apparently endorsed the landmine campaign.
- 4.2.4 Despite repeated requests by the PCLU to submit the relevant docket for decision, no such docket was ever submitted, nor were the minutes of this Lusaka meeting ever produced.
- 4.2.5 More than once Britz stated that the docket was with the former National Commissioner Johan van der Merwe and his legal advisor. It is noteworthy that no such case was registered in the 395-docket register. Furthermore, requests made to Van der Merwe and his lawyer to produce the docket were also unsuccessful.
- 4.2.6 The PCLU was then informed by the NDPP that Commissioner Selebi had alleged that the NDPP and the PCLU advocates were on the verge of arresting the President.
- 4.2.7 Consequently Minister Maduna visited the offices of the NDPP and satisfied himself that there was no basis for this allegation.
- 4.2.8 In order to dispel any further speculation on this aspect, the PCLU perused all the available evidence relating to the issue and advised the NDPP that there was no evidence against the President and the others who had been refused amnesty by the TRC.
- 4.2.9 To clear the lines, the NDPP directed that Britz and Nel vacate the office of the DPP in Pretoria and that all their dockets be returned to SAPS. This in fact took place.
- 4.2.10 Britz was reinstated in SAPS: Crimes against the State, Head Office component and mandated by SAPS to continue with his investigations.
- 4.2.11 Britz, thereafter contacted the Deputy Head of the PCLU, wanting written confirmation of the decision not to prosecute the President. On 2 July 2004 he was given a written notice. (Annexure F)
- 4.2.12 On 5 July 2004 Britz and his Unit Commander approached the Deputy Head of the PCLU, complaining about the decision not to prosecute the President and alleged that there was an abundance of evidence to justify a prosecution. They were invited to submit the relevant docket, but as of even date, no such docket has materialised (see Annexure G).

5. STATE VERSUS BLANI

- 5.1 The Murder and Robbery Unit in Port Elizabeth originally investigated this matter.
- 5.2 The suspect was linked to the crime by fingerprint evidence.
- 5.3 A warrant for his arrest was obtained but not executed, because he could not be traced. This warrant was never cancelled by SAPS.
- 5.4 As a result of Commissioner Fivaz's instruction of 7 November 1996, namely, that all cases be referred to Dr D'Oliveira's Unit, the docket came into possession of Britz. The investigation diary of the docket confirms that on 16 July 2003, Director Nel received it for further investigation. See pages C63 to C65 of the investigation diary attached as Annexure H1. Director Nel established that certain suspects were still outstanding on warrants and thereafter traced them. He thereafter furnished the Serious & Violent Crimes Unit in Port Elizabeth with copies of the witness statements with instructions to trace the suspects and witnesses.
- 5.5 In 2003, Britz referred the docket to the PCLU, requesting a prosecution of Blani on the basis that he had been traced by SAPS and had not applied for amnesty. This case is reflected as case No 266 in the SAPS register.
- 5.6 In order to determine whether the evidence was still available, Britz was requested to confirm whether he was now the investigating officer. Britz informed the PCLU that the Serious and Violent Crime Unit in Port Elizabeth would investigate the matter.
- 5.7 The Unit Commander shortly thereafter contacted the PCLU and indicated that he would appoint members to investigate the matter.
- 5.8 On 25 Nov 2003 the Unit Commander was instructed in writing to do the necessary investigations, where after the accused was arrested and charged. (Annexure H2).
- 5.9 On several occasions Britz contacted the PCLU in order to establish what progress had been made in the case.
- 5.10 In view of the above, it is clear that the allegation made by Commissioner Selebi, namely, that the PCLU approached a local low ranking police officer to arrest the accused, is unfounded.

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**REPORT
AMNESTY TASK TEAM**

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Secret**REPORT: AMNESTY TASK TEAM**

1. Background
 - 1.1 A Director-General's Forum, under the chairpersonship of the Director-General, Justice and Constitutional Development on 23 February 2004, appointed a Task Team to consider and report on the following:
 - "1. Consideration of the nature of the 'arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation' that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past.
 2. Consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past
 3. Bearing the above-mentioned in mind, whether legislative enactments are required."
 - 1.2 The Task Team comprises the following members:

Deon Rudman (Chairperson):	Department of Justice and Constitutional Development
Yvonne Mabule :	National Intelligence Agency
Vincent Mogotlane :	National Intelligence Agency
Gerhard Nel	National Prosecuting Authority
Lungisa Dyosi	National Prosecuting Authority
Ray Lalla :	South African Police Service
Joy Rathebe	Department of Defence
 - 1.3 The Task Team was requested to submit its report to the Director-General's Forum by close of business on 1 March 2004. The Task Team met for the first time on 26 February 2004 and again on 1 March

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2004. Commissioner Ray Lalla could unfortunately not attend the first meeting. He did, however, submit his proposals to the Task Team for its consideration.

2. Terms of reference

2.1 At the outset the Task Team discussed its terms of reference in detail. It came to the conclusion that it had to perform its task within the framework laid down by the President in his statement to the National Houses of Parliament and the Nation on the occasion of the Tabling of the Report of the Truth and Reconciliation Commission on 15 April 2003. The President provided the following guidelines:

- (a) There shall be no general amnesty, because it would fly in the face of the TRC process and detract from the principle of accountability which is vital, not only in dealing with the past, but also in the creation of a new ethos within our society.
- (b) Yet we also have to deal with the reality that many of the participants in the conflicts of the past did not take part in the TRC process. Among these are--
 - individuals who were misled by their leadership to treat the process with disdain;
 - others who calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel;
 - others who expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases, which did not happen.

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- (c) "Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations."
- (d) "We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing."
- (e) "However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation."
- (f) "This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts."
- (g) "It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today, for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity."
- (h) "This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts."

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- (i) "Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action."
- (j) "Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard."
- (k) "The National Directorate of Public Prosecutions and relevant Departments will be requested to deal with matters relating to people who were unaccounted for, post mortem records and policy with regard to burials of unidentified persons. We would like to encourage all persons who might have any knowledge of people still unaccounted for to approach the National Directorate of Public Prosecutions, the South African Police Service and other relevant departments."

2.2 Paragraph 1 of the Task Team's terms of reference relates directly to the abovementioned framework determined by the President. Paragraphs 2 and 3 were added to the Task Team's terms of reference in order to enable it to pursue alternative routes in order to address the concerns expressed by the President should the Task Team deem it necessary.

3. Discussion

3.1 In its deliberations the Task Team also took cognisance of the following factors:

- (a) In terms of section 179(1) and (2) of the Constitution the National Prosecuting Authority (NPA) is an independent constitutional institution and the National Director of Public Prosecutions (NDPP) has full discretion on whether a particular

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prosecution should or should not be instituted The Task Team's recommendations should therefore be consistent with this constitutional requirement

- (b) Any recommendations relating to the granting or refusing of amnesty should be in line with the TRC process which was constitutionally entrenched as a trade-off between the individual's right to seek justice in a court of law, on the one hand, and the imperatives of reconciliation and reparation, on the other.

3.2 Ad paragraph 1 of terms of reference

3.2.1 In order to give effect to the "arrangements" contemplated in the President's statement as reflected in paragraph 1 of the Task Team's terms of reference, it is recommended that a Departmental Task Team be appointed comprising members of the following Departments or institutions:

- The Department of Justice and Constitutional Development
- The Intelligence Agencies
- The South African National Defence Force
- The South African Police Service
- Correctional Services
- The National Prosecuting Authority
- Office of the President

3.2.2 The functions of the proposed Task Team should be the following:

- (a) Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard

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- (b) To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—
 - (i) the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;
 - (ii) the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision.

- (c) To—
 - receive information or representations from victims, perpetrators, legal representatives or any other person or institution regarding any specific matter;
 - gather intelligence information;
 - investigate the matter;
 - consult victims.

- (d) To consider the following factors when carrying out its mandate:
 - (i) The general criteria governing a decision to prosecute as determined by the NDPP in the Policy Manual attached hereto as Annexure "A".
 - (ii) The following specific criteria:
 - o Whether the alleged offence is associated with a political objective committed in the course of the conflicts of the past.

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- o Whether a prosecution can be instituted on the strength of adequate evidence.
- o Whether the case, geographically and politically, reflects the aims and objectives set out in the Promotion of National Unity and Reconciliation, 1995(Act 34 of 1995), and is not in conflict with the requirements of objectivity in prosecutions specified in the Constitution.
- o Whether the offence in question is serious
- o Whether the ill health of or other humanitarian consideration relating to the accused may justify the non-prosecution of the case.
- o Whether the prosecution will lead to the traumatising of victims and conflicts in areas where reconciliation has already taken place.
- o The degree of co-operation on the part of the alleged offender.
- o The credibility of the alleged offender.
- o The alleged offender's sensitivity to the need for restitution.
- o The alleged offender's further endeavours to expose possible further clandestine operations during the past years of conflict.
- o The degree of remorse shown by the alleged offender and his or her attitude towards reconciliation
- o The degree of indoctrination to which the alleged offender was subjected
- o The extent to which the alleged offender carried out instructions or perceived instructions.
- o The disclosure of organisations/individuals, if any, under whose instructions the alleged offender operated.

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- o The alleged offender's role during the TRC process – co-operation, full disclosure and assisting the process in general (if relevant).
- o Renunciation of violence and willingness to abide by the Constitution on the part of the alleged offender.
- o Whether the alleged offender fully disclosed the alleged offences.
- o The views of the NPA.
- o If the accused is in custody, the views of the presiding judge or magistrate.
- o Any other criteria for deciding whether a political offence was committed as set out in the TRC Act
- o Any further criteria, which the Task Team might deem necessary.

(e) To consider—

- (i) the provisions of section 105A of the Criminal Procedure Act, 1977(Act 51 of 1977), relating to plea and sentence agreements and the directives issued by the NDPP in terms of section 105A(11) of the said Act;
- (ii) the provisions of sections 7 of the Criminal Procedure Act relating to the issuing of a *nolle prosequi* certificate and the right of a private person to institute criminal proceedings in terms of the section 8 of the said Act;
- (iii) the provisions of section 18 of the Criminal Procedure Act relating to the lapsing of the right to institute a prosecution for any offence after the expiration of a period of 20 years from the time when the offence was committed, other than the offences of murder; treason committed when the Republic is in a state of war; robbery, if aggravating circumstances were present; kidnapping; child stealing; rape; or the crime of genocide, crimes

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against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002.

- (iv) the possibility of diversion in the case of juvenile offenders;
- (v) possible arrangements settling the matter out of court;
- (vi) the provisions of section 204(2) of the Criminal Procedure Act relating to the discharge of the alleged offender from prosecution for the alleged offence if such offender testified as a state witness and answered all questions frankly and honestly.

3.2.3 If the above proposals are acceptable, it is recommended that the President announces the proposed process and invites full participation by those who may benefit from the process.

3.2.4 The Task Team realises that the proposed process will have the following shortcomings/concerns:

- (a) A possible negation of the constitutional rights of victims, the public at large and alleged offenders.
- (b) The possibility of the institution of private prosecutions.
- (c) The absence of any guarantee that alleged offenders will not be prosecuted. This might mean that they will be reluctant to approach the Task Team and make full disclosure. The concerns relating to persons who have disappeared, the arms caches that have not yet been discovered and the Kwazulu-Natal problem will not be solved.

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(d) Public perception regarding the participation in a further amnesty process by the security services as the public may regard them as perpetrators in the conflicts of the past.

3.3 Ad paragraph 2 of terms of reference

3.3.1 The Task Team is of the view that the only way to address the above concerns adequately would be to provide for a further amnesty process similar to that of the TRC process. This possibility elicited much debate within the Task Team. On the one hand, there were those who rejected this possibility out of hand. They argued that such a process would undermine and discredit the TRC process, further undermine the reconciliation process and not necessarily achieve the desired objectives. They argued that there is no reason why offenders who previously refused to participate in the TRC process will now all of a sudden decide otherwise. Some members of the Task Team, however, placed emphasis on the need to create a further effective opportunity for full disclosure in order to address the concerns referred to in paragraph 3.2.4(c) above. They argued that a substantial number of those individuals who were in the past misled by their leadership and others who expected their political leadership to provide the overall context against which they could present their cases, may make use of a further amnesty process.

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

3.4 Ad paragraph 3 of terms of reference

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The recommendations under paragraph 1 of the terms of reference do not require any legislation. Should Government, however, decide on a further amnesty process as discussed in paragraph 3.3, legislation will be required since the mechanisms and procedures of the TRC Act have run their course and can no longer be applied. If it is decided to follow the latter route, an amendment of the Constitution is also proposed in order to enable such legislation being adopted and to pass muster in the Constitutional Court.

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AMNESTY TASK TEAM

FURTHER REPORT

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FURTHER REPORT: AMNESTY TASK TEAM

1. Background Information

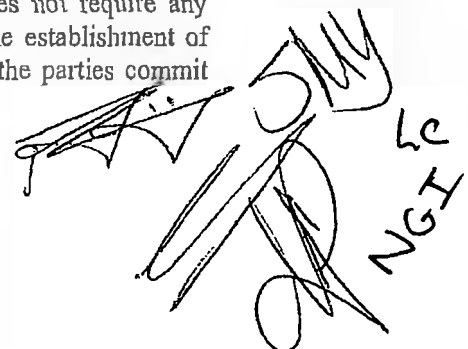
- 1.1 On 3 March 2004 the Amnesty Task Team submitted a Report to a Heads of Department Forum for consideration.
- 1.2 The Heads of Department discussed the Report with members of the Task Team, whereafter they deliberated the Task Team's proposals and recommendations *in camera*. Following these deliberations, the Heads of Department indicated that they prefer the Task Team's recommendations relating to the establishment of a Departmental Task Team (hereinafter referred to as Option 1). They, however, requested the Task Team to give further consideration to the following aspects relating to Option 1:
 - (a) Parallel structures in order to assist the proposed Departmental Task Team, are not acceptable. In performing its functions the proposed Task Team must make use of existing structures.
 - (b) Consider whether there is a way in which private prosecution and civil litigation can be eliminated if the National Director of Public Prosecutions decides not to prosecute? Investigate the possibility and desirability of legislation, if required.
 - (c) The proposed Task Team should work under the direct supervision of an Inter-Ministerial Committee.
 - (d) It is important that the proposed Task Team, the Inter-Ministerial Committee and the National Director, in performing their functions and reaching decisions, should take national interest into account.
 - (e) Advise the Forum on whether a person who is aggrieved by a decision of the National Director may approach the International Criminal Court.
 - (f) Advise the Forum on a time line for the completion of the work of the proposed Task Team. Twelve months was mentioned as a possibility.

2. Discussion

2.1 The establishment of a Departmental Task Team

Before discussing the above aspects, the Task Team once again considered the question whether legislation is required to establish the proposed Departmental Task Team. The Task Team met with two senior State Law Advisers of the Office of the Chief State Law Adviser. They confirmed the Task Team's conclusion in paragraph 3.4 of its Report, namely, that the recommendations pertaining to the establishment of a Departmental Task Team is an administrative process and does not require any legislation. They, however, recommended that the process and the establishment of the proposed Task Team be put into writing and suggested that the parties commit

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themselves to the process in a Memorandum of Understanding. The Task Team supports this proposal of the State Law Advisers

2.2 Ad paragraph 1.2(a): The involvement of existing structures

The Task Team supports this proposal of the Forum. However, in order to ensure the effective cooperation of such existing structures it is important that the existing structures, prior to the implementation of the proposed structure, commit themselves and give their full support and cooperation to the proposed process. It is proposed that such existing structures should be parties to the Memorandum of Understanding contemplated in paragraph 2.1 *supra*.

2.3 Ad paragraph 1.2(b): Consider the possibility and desirability of eliminating private prosecution and civil litigation in cases of no prosecution

2.3.1 The question whether it is possible or desirable to eliminate private prosecution and civil litigation elicited much debate within the Task Team. The Task Team obtained a written legal opinion from Adv JH Bruwer (attached hereto as Annexure "A") and also discussed the question with the two State Law Advisers referred to in paragraph 2.1 above. They are all in agreement that any legislation eliminating private prosecution and civil litigation will at least affect a person's right to equality (section 9(1) of the Constitution) and the right of access to courts (section 34). They also indicated that it is doubtful whether the motivation for such legislation would meet the requirements of section 36 (limitation clause) of the Constitution, and in case of the enactment of such legislation, an amendment of the Constitution would be required.

2.3.2 The State Law Advisers referred to in paragraph 2.1 above, indicated that they would advise against the enactment of any further legislation, since it would limit the rights of the victims or other interested parties. They further agreed with the Task Team that the proposed legislation, eliminating private prosecution and civil litigation, might be seen as a further amnesty process, which would be inconsistent with the Heads of the Department's view that Option 2 (a further amnesty process) is not an option at all.

2.3.3 In the final instance we wish to draw the Forum's attention to an article in *Rapport* of 7 March 2004 relating to the question of amnesty. During an interview with Archbishop Desmond Tutu, he expressed the view that every person who has not received amnesty through the TRC-process may be prosecuted and any new agreement to stop prosecutions is undesirable, since it will, among others, have the effect of negating the amnesty process of the TRC.

2.3.4 In the light of the above, the Task Team is of the view that private prosecution and civil litigation can only be eliminated by way of legislation and a Constitutional amendment. The Task Team is of the view that such a step would not be desirable.

2.4 Ad paragraph 2.1(c): The establishment of an Inter-Ministerial Committee

The Task Team supports this proposal. However, it wishes to point out that the State Law Advisers are of the view that the establishment of such a further structure may constitute a cumbersome process and increase the possibility of conflicting views

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between the various role-players and structures. Furthermore, they pointed out that the process might be seen as an attempt by the Government to put undue pressure on the National Director of Public Prosecutions in reaching an independent decision.

2.5 Ad paragraph 2.1(d): National interest should be the paramount objective

The Task Team wholeheartedly agrees with this viewpoint of the Forum.

2.6 Ad paragraph 2.1(e): The involvement of the International Criminal Court

This question was also referred to Adv JH Bruwer for his advice. In paragraph 3 of Annexure "A" he comes to the conclusion that, taking into account the provisions of section 5(1), read with section 5(6) and the definitions of the relevant crimes of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), "it is not inconceivable that a complainant who is prohibited by legislation contemplated in paragraph 1(a) from instituting a private prosecution in the national court may approach the International Criminal Court for relief". The Task Team agrees with this viewpoint.

2.7 Ad paragraph 2.1(e): Setting a time line for the Task Team to complete its work

The Task Team is hesitant to propose a specific time line at the stage when the process is to be announced. The setting of a time line in respect of the TRC process led to expectations and the subsequent extension of the TRC process, although justified and unavoidable, led to fierce criticism. It is proposed that the President should rather indicate that it is expected that the Task Team will finalise its work within a specified period and that such period will be determined taking into account the extent to which its objectives are achieved.



APPENDIX A**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****A. INTRODUCTION**

1. In his statement to the National Houses of Parliament and the Nation, on 15 April 2003, President Thabo Mbeki, among others, gave Government's response to the final report of the Truth and Reconciliation Commission (TRC). The essential features of the response for the purpose of this new policy, are the following:
 - (a) It was recognized that not all persons who qualified for amnesty availed themselves of the TRC process, for a variety of reasons, ranging from incorrect advice (legally or politically) or undue influence to a deliberate rejection of the process.
 - (b) A continuation of the amnesty process of the TRC cannot be considered as this would constitute an infringement of the Constitution, especially as it would amount to a suspension of victims' rights and would fly in the face of the objectives of the TRC process. The question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.
 - (c) As part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearthing the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.
 - (d) Therefore, persons who had committed crimes, before 11 May 1994, which emanate from conflicts of the past, could enter into agreements with the prosecuting authority in accordance with existing legislation. This was stated in the context of the recognition of the need to gain a full understanding of the networks which operated at the relevant time since, in certain instances, these networks still operated and posed a threat to current security. Particular reference was made to un-recovered arms caches.
2. In view of the above, prosecuting policy, directives and guidelines are required to reflect and attach due weight to the following:
 - (a) The Human Rights culture which underscores the Constitution and the status accorded to victims in terms of the TRC and other legislation.
 - (b) The constitutional right to life.
 - (c) The non-prescriptivity of the crime of murder.
 - (d) The recognition that the process of transformation to democracy recognized the need to create a mechanism where persons who had committed politically motivated crimes, linked to the conflicts of the past, could receive indemnity or amnesty from prosecution.
 - (e) The *dicta* of the Constitutional Court justifying the constitutionality of the above process, inter alia, on the basis that it did not absolutely deprive victims of the right to prosecution in cases where amnesty had been refused. (See *Azanian Peoples Organisation v The President of the RSA, 1996 (8) BCLR 1015 CC*).
 - (f) The recommendation by the TRC that the NPA should consider prosecutions for persons who failed to apply for amnesty or who were refused amnesty.

- (g) Government's response to the final Report of the TRC as set out in paragraphs 1(a) to (d) above.
 - (h) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See *The State v Wouter Basson CCT 30/03*.)
 - (i) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).
 - (j) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.
 - (k) The existing prosecuting policy and general directives or guidelines issued by the National Director of Public Prosecutions (NDPP) to assist prosecutors in arriving at a decision to prosecute or not.
 - (l) The terms and conditions under which the Amnesty Committee of the TRC could consider applications for amnesty and the criteria for granting of amnesty for gross violation of human rights.
3. Government did not intend to mandate the NDPP to, under the auspice of his or her own office, perpetuate the TRC amnesty process. The existing legislation and normal process referred to by the President, include the following:
- (a) Section 204 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which provides that a person who is guilty of criminal conduct may testify on behalf of the State against his or her co-conspirators and if the Court trying the matter finds that he or she testified in a satisfactory manner, grant him or her indemnity from prosecution.
 - (b) Section 105A of the Criminal Procedure Act, 1977, which makes provision for a person who has committed a criminal offence to enter into a mutually acceptable guilty plea and sentence agreement with the NPA.
 - (c) Section 179(5) of the Constitution in terms of which the NDPP, among others—
 - (i) must determine, in consultation with the Minister and after consultation with the Directors of Public Prosecutions, prosecution policy to be observed in the prosecution process;
 - (ii) must issue policy directives to be observed in the prosecution process; and
 - (iii) may review a decision to prosecute or not to prosecute.
 - (d) The above process would not indemnify such a person from private prosecution or civil liability.
4. The NPA has a general discretion not to prosecute in cases where a *prima facie* case has been established and where it is of the view that such a prosecution would not be in the public interest. The factors to be considered include the following:
- (a) The fact that the victim does not desire prosecution.
 - (b) The severity of the crime in question.
 - (c) The strength of the case.

(d) The cost of the prosecution weighed against the sentence likely to be imposed.

(e) The interests of the community and the public interest.

In the event of the NPA declining to prosecute in such an instance, such a person is not protected against a private prosecution.

5. Therefore, following Government's response, and the equality provisions in our Constitution and the equality legislation, and taking into account the above factors regarding the handling of cases arising from conflicts of the past, which were committed prior to 11 May 1994, it is important to deal with these matters on a rational, uniform, effective and reconciliatory basis in terms of specifically defined prosecutorial policies, directives and guidelines.

B. PROCEDURAL ARRANGEMENTS WHICH MUST BE ADHERED TO IN THE PROSECUTION PROCESS IN RESPECT OF CRIMES ARISING FROM CONFLICTS OF THE PAST

The following procedure must be strictly adhered to in respect of persons wanting to make representations to the NDPP, and in respect of those cases already received by the Office of the NDPP, relating to alleged offences arising from conflicts of the past and which were committed before 11 May 1994:

1. A person who faces possible prosecution and who wishes to enter into arrangements with the NPA, as contemplated in paragraph A1 above (the Applicant), must submit a written sworn affidavit or solemn affirmation to the NDPP containing such representations.
2. The NDPP must confirm receipt of the affidavit or affirmation and may request further particulars by way of a written sworn affidavit or solemn affirmation from the Applicant. The Applicant may also *mero moto* submit a further written sworn affidavit or solemn affirmation to the NDPP containing representations.
3. All such representations must contain a full disclosure of all the facts, factors or circumstances surrounding the commission of the alleged offence, including all information which may uncover any network, person or thing, which posed a threat to our security at any stage or may pose a threat to our current security.
4. The Priority Crimes Litigation Unit (PCLU) in the Office of the NDPP shall be responsible for overseeing investigations and instituting prosecutions in all such matters.
5. The regional Directors of Public Prosecutions must refer all prosecutions arising from the conflicts of the past, which were committed before 11 May 1994, and with which they are or may be seized, immediately to the Office of the NDPP.
6. 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.
7. The NDPP must approve all decisions to continue an investigation or prosecution or not, or to prosecute or not to prosecute.

8. The NDPP must also be consulted in respect of and approve any offer to a perpetrator relating to the bestowing of the status of a section 204 witness and all section 105A plea and sentence agreements.
9. The NDPP may obtain the views of any private or public person or institution, our intelligence agencies and the Commissioner of the South African Police Service, and must obtain the views of any victims, as far as is reasonably possible, before arriving at a decision.
10. A decision of the NDPP not to prosecute and the reasons for that decision must be made public.
11. In accordance with section 179 (6) of the Constitution, the NDPP must inform the Minister for Justice & Constitutional Development of all decisions taken or intended to be taken in respect of this prosecuting policy relating to conflicts of the past.
12. The NDPP may make public statements on any matter arising from this policy relating to conflicts of the past, where such statements are necessary in the interests of good governance and transparency, but only after informing the Minister for Justice and Constitutional Development thereof.
13. The institution of any prosecution in terms of this policy relating to conflicts of the past would not deprive the accused from making further representations to the NDPP requesting the NDPP to withdraw the charges against him or her. These representations would be considered according to the NPA prosecuting policy, directives, guidelines and established practice. The victims must, as far as reasonably possible, be consulted in any such further process and be informed, should the accused's representations be successful.
14. The NDPP may provide for any additional procedures.
15. All state agencies, in particular those dealing with the prosecution of alleged offenders and those responsible for the investigation of offences, must be requested not to use any information obtained from an alleged accused person during this process in any subsequent criminal trial against such a person. Whatever the response of such agencies may be to this request, the NPA records that its policy in this regard is not to make use of such information at any stage of the prosecuting process, especially not to present it in evidence in any subsequent criminal trial against such person.

C. CRITERIA GOVERNING THE DECISION TO PROSECUTE OR NOT TO PROSECUTE IN CASES RELATING TO CONFLICTS OF THE PAST

Apart from the general criteria set out in paragraph 4 of the Prosecuting Policy of the NPA, the following criteria are determined for the prosecution of cases arising from conflicts of the past:

1. The alleged offence must have been committed on or before 11 May 1994.
2. Whether a prosecution can be instituted on the strength of adequate evidence after applying the general criteria set out in paragraph 4 of the said Prosecuting Policy of the NPA.
3. If the answers to paragraphs 1 and 2 above are in the affirmative, then the further criteria in paragraphs (a) to (j) hereunder, must, **in a balanced way**, be applied by the NDPP before reaching a decision whether to prosecute or not:
 - (a) Whether the alleged offender has made a full disclosure of all relevant facts, factors or circumstances to the alleged act, omission or offence.
 - (b) Whether the alleged act, omission or offence is an act associated with a political objective committed in the course of conflicts of the past. In reaching a decision in this regard the following factors must be considered:

- (i) The motive of the person who committed the act, commission or offence.
- (ii) The object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals.
- (iii) Whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, agent or a supporter.
- (iv) The relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, but does not include any act, omission or offence committed—
 - (aa) for personal gain; or
 - (bb) out of personal malice, ill-will or spite, directed against the victim of the act or offence committed.
- (c) The degree of co-operation on the part of the alleged offender, including the alleged offenders endeavours to expose—
 - (i) the truth of the conflicts of the past, including the location of the remains of victims; or
 - (ii) possible clandestine operations during the past years of conflict, including exposure of networks that operated or are operating against the people, especially if such networks still pose a real or latent danger against our democracy.
- (d) The personal circumstances of the alleged offender, in particular—
 - (i) whether the ill-health of or other humanitarian consideration relating to the alleged offender may justify the non-prosecution of the case;
 - (ii) the credibility of the alleged offender;
 - (iii) the alleged offender's sensitivity to the need for restitution;
 - (iv) the degree of remorse shown by the alleged offender and his or her attitude towards reconciliation;
 - (v) renunciation of violence and willingness to abide by the Constitution on the part of the alleged offender; and
 - (vi) the degree of indoctrination to which the alleged offender was subjected.
- (e) Whether the offence in question is serious.
- (f) The extent to which the prosecution or non-prosecution of the alleged offender may contribute, facilitate or undermine our national project of nation-building through transformation, reconciliation, development and reconstruction within and of our society.
- (g) Whether the prosecution may lead to the further or renewed traumatising of victims and conflicts in areas where reconciliation has already taken place.

- (h) If relevant, the alleged offender's role during the TRC process, namely, in respect of co-operation, full disclosure and assisting the process in general.
- (i) Consideration of any views obtained for purposes of reaching a decision.
- (j) Any further criteria, which might be deemed necessary by the prosecuting authority for reaching a decision.

<http://www.pmg.org.za/docs/2005/060117advnel.doc>

Annexure "D"

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The Divisional Commissioner
Crime Intelligence
South African Police Service
PRETORIA

Date: 4 June 2003

ATTENTION: COMMISSIONER LALLA

Dear Commissioner Lalla

ASSISTANCE INVESTIGATION OF CASES ARISING FROM THE TRC

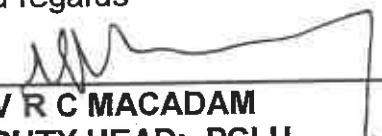
The National Director has created the Priority Crimes Litigation Unit in his office to deal with the investigations and prosecutions of cases arising from the TRC.

The assistance of your office is sought in connection with the following matters:

- (i) Allegation that Ms Mandela took part in the killing of Chris Hani. An intelligence report was provided by your Pietersburg office to me. I requested your Director Hankel to assist in identifying the informant in order to assess the reliability of his allegations. He has in turn referred the matter to you. The National Director has expressed his desire that a speedy final decision be made concerning whether Ms Mandela should be prosecuted for TRC related matters.
- (ii) Motherwell Bombing / Brian Ngulunga / De Kock / General Nick van Rensburg.

A number of investigations are in progress concerning allegations that General Van Rensburg ordered De Kock to kill various security branch members in order to prevent them from defecting to the ANC. If the records maintained by the former security branch relating to the incidents are still available these might contain valuable information which can shed more light on the allegations. I have been informed that your office is now the custodian of these records and would be grateful if agreement could be reached to gain access thereto.

Kind regards


ADV R C MACADAM
DEPUTY HEAD: PCLU



IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS
AND/OR PROSECUTIONS

AFFIDAVIT OF ANTON ROSSOUW ACKERMANN

I, the undersigned

ANTON ROSSOUW ACKERMANN

state under oath as follows:

Introduction

1. I am an adult male, a senior counsel, and a former Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions ("**NDPP**"). I am currently retired and residing in the Western Cape.
2. In terms of section 13(1)(c) of the National Prosecuting Act No. 32 of 1998 ("**the Act**"), I was appointed by President TM Mbeki, under a Presidential Proclamation dated 24 March 2003, to head the Priority Crimes Litigation Unit ("**PCLU**"), located at the head office of the National Prosecuting Authority ("**NPA**"). I served as head of the PCLU from 2003 to 2013, when I retired.
3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.



S-M

4. I depose to this affidavit to assist the Judicial Commission of Inquiry into stopped TRC Investigations and/or Prosecutions ("**the Commission**") to address paragraphs 1 to 1.3.2 of the terms of reference of the Commission.

Confirmation of affidavits

5. I confirm the contents of my affidavit dated 7 May 2015 which was attached as a supporting affidavit in the matter of *Nkadimeng v NDPP and Others* (Gauteng Division, Case No. 36554/2015). I will rely on the full contents of this affidavit to address the aforesaid paragraphs of the terms of reference. A copy of this affidavit was supplied by Webber Wentzel attorneys¹ to the Commission on 10 October 2025 in divider (bundle) 3 at paginated pages 890 - 907.

6. I also confirm the contents of the founding affidavit of Lukhanyo Calata dated 17 January 2025 filed in *Calata & Others v Government of South Africa & Others* (Gauteng Division, Case No. 2025-005245), insofar as it pertains to me ("**the Calata affidavit**"). A certified copy of this affidavit was supplied by Webber Wentzel attorneys to the Commission on 10 October 2025 in bundle 1 at paginated pages 1 - 842.

6.1 In respect of paragraph 33.1 of my aforesaid affidavit and paragraph 234 of the Calata affidavit I point out that the letter from the SAPS Legal Support Section Maj Gen P C Jacobs was probably addressed to the NDPP not the Priority Crimes Litigation Unit ("**PCLU**").

6.2 I also point out that in respect of paragraph 216 and the first line of paragraph 217 of the Calata affidavit the Senior Superintendent Britz

¹ Attorneys for the 22 families and the Foundation for Human Rights.



referred to therein is "Hennie Britz" and not "Karel Johannes 'Suiker' Britz".

Reliance on Macadam affidavit and annexes

7. I align myself with the contents of the affidavit of Raymond Christopher Macadam ("**Macadam**") filed in the Joao Rodrigues stay of prosecution case in *Rodrigues v NDPP & Others* (Case No. 76755/18, Gauteng Division). I will rely on the contents of this affidavit, together with the documents attached to that affidavit, to address the aforesaid terms of reference. A copy of this affidavit was supplied by Webber Wentzel attorneys to the Commission on 10 October 2025 in bundle 1 at paginated pages 276 - 359.

Provision of new documents

8. I attach to this affidavit two documents that are not currently part of the record provided by Webber Wenzel attorneys on 10 October 2025.
 - 8.1 A letter dated 16 March 2004 I addressed to Raymond Lalla, the Divisional Commissioner of SAPS Crime Intelligence ("**Lalla**"), annexed hereto marked "A".
 - 8.2 An internal memorandum dated 27 September 2007 I addressed to DSO Head, Adv Leonard McCarthy ("**McCarthy**") titled "Project Gnome".
9. In the letter to Lalla, I expressed my displeasure at him secretly videotaping a confidential meeting I held with him on 25 August 2003, in respect of the TRC cases. In that meeting I voiced my frustration and disgust with the refusal of the DSO to take on the TRC cases. That videotape was then handed over to



A handwritten signature in black ink, appearing to be 'R W', located at the bottom right of the page.

NDPP Ngcuka, Deputy NDPP Ramaite and DSO Head McCarthy. I was then called into a meeting with them and confronted with the video recording.

10. The internal memorandum sent to McCarthy on 27 September 2007 dealt with the investigation into the fabricated note I referred to in my 2015 affidavit from paragraph 35 (bundle 1, paginated page 905).² In this memorandum I explained to McCarthy why the note was definitely forged.

Request to locate documents / evidence

11. I respectfully request the Commission to secure or subpoena the following documents and items of evidence:

11.1 From the Department and Ministry of Justice:

11.1.1 Minutes and records of the following bodies:

11.1.1.1 Special Cabinet Committee on the Post TRC cases / Subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on Post TRC matters.

11.1.1.2 Committee of Directors General, in respect of their deliberations on the TRC cases.

11.1.1.3 The Amnesty Task Team.

11.1.1.4 The Inter-departmental Task Team on the TRC cases.

11.2 From the NPA:

² See also paragraph 260 of the Calata affidavit.



SW

- 11.2.1 A copy of the fabricated note referred to in paragraph 10 above.
- 11.2.2 Relevant documents, including reports and correspondence, from the person commissioned to investigate the hacking of my computer in respect of the fabricated note.
- 11.2.3 Report on the costs expended for the services of the investigator.
- 11.3 From the SAPS:
 - 11.3.1 The original fabricated note that was allegedly in the possession of the DSO.
 - 11.3.2 The videotape made by Raymond Lalla of the meeting with me, Torie Pretorius and Chris Macadam on 25 August 2003.

Allegations of Imtiaz Cajee

12. I was sent an undated Notice in terms of Rule 3.3 with various allegations made by Imtiaz Cajee arising from his affidavit dated 30 September 2025.

Paragraph 47: No concerted effort

- 13. In respect of Cajee's allegation in paragraph 47, I point out that I was only appointed as head of the PCLU on 24 March 2003 and the then NDPP declared the TRC cases to be priority crimes in May 2023. I was not personally involved in the Ahmed Timol case, which was being handled by Adv Chris Macadam, but it was one of the TRC cases falling within our mandate.
- 14. Extensive efforts to secure investigators for the TRC cases were made from early May 2003 shortly after their designation as priority crimes, as set out in

the Macadam and Calata affidavits. As stated in the aforesaid affidavits both the Directorate for Special Investigations (“**DSO**” or “**Scorpions**”) and the South African Police (“**SAPS**”) declined to investigate the TRC cases.

- 15. This effectively blocked the investigation of the TRC cases for several years and severely undermined the prospects of justice in those cases, including the Timol case.
- 16. I deny that I placed the burden of investigating the Timol case onto Cajee, but I accept that in the absence of investigations by the DSO / SAPS, families, including the Timol family, felt obliged to carry out their own investigations.

Paragraphs 195 - 6: Failure to create mechanism and to approach the President

Paragraph 207: Allegation of no interference

Paragraphs 208-9: Alleged failure to resist

- 17. I agree that government failed to take steps to investigate the TRC cases. I also agree that the President should have been approached.
- 18. As I was not the NDPP it was not within my prerogative or power to contact the President.
- 19. However, after DSO Special Director Adv MG ‘Geoph’ Ledwaba (“**Ledwaba**”) refused to sign the section 28(1)(b)³ notices in respect of the TRC cases, I recall that I approached either Adv Leonard McCarthy, then head of the DSO, or Adv Bulelani Ngcuka, then NDPP, or Adv Silas Ramaite, then Deputy NDPP to expedite the signing of the said notices.

³ Inquiries by Investigating Director in terms of the National Prosecuting Act 32 of 1998.

20. Regrettably, the said notices were not authorised, notwithstanding my efforts. I did not have the power to take the matter further than that.
21. Within the NPA I raised my concern about the obstruction of the TRC cases. I refused to take part in the amendments to the Prosecution Policy, which I regarded as unconstitutional.
22. On 3 May 2007, NDPP Pikoli and I appeared before the Justice Portfolio Committee in Parliament. I advised that the lack of progress in the TRC cases was not the fault of the PCLU. Pikoli advised the Commission that "*there was politically sensitive issue*", and that "*whenever there was an attempt to charge the former police there was a political intervention and that effectively the NPA was being held to ransom by the former generals.*"⁴
23. From around 2006 I advised families and lawyers that we were struggling to get investigators for the TRC cases and suggested they should pursue inquests rather than prosecutions.
24. I agree with the views of the Full Court in the Rodrigues matter that the NPA should have asserted its authority and independence and resisted the political interference.
25. Because of my opposition to the interference in the TRC cases I was relieved of my duties in respect of these cases in September 2007, and it is also one of the reasons why Pikoli was suspended as NDPP.
26. To the extent that Cajee alleges that there was no interference in the work of prosecutors in the TRC cases, I deny such a claim.

⁴ See para 250 of the Calata affidavit.

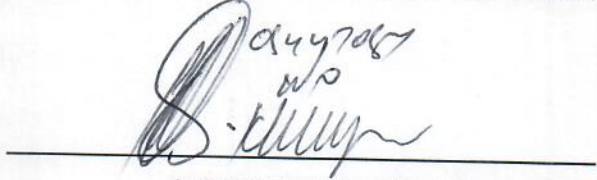
Handwritten signature and initials, possibly 'SM'.

- 27. To the extent that Cajee describes me as an old order prosecutor acting in the interests of the former regime, I point out that I always prosecuted without fear or prejudice, regardless of the nature of the case. I was the lead prosecutor in the prosecution of former apartheid security operatives: Eugene de Kock, Wouter Basson and Ferdi Barnard, amongst others.
- 28. In this regard I annex hereto marked "C" a note I received from George Bizos SC in relation to my role at the inquest of Jabu Vilakazi, in which he also appeared.



ANTON ROSSOUW ACKERMANN

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Hermanus on 25 October 2025, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

Full names: Siphindile Mkhaw Khuy
 Business address: 61 Main Road
 Designation: Warrant officer
 Capacity:



P O Box 10036
MORELETA PLAZA
0167
16 March 2004

Commissioner Lalla
The Divisional Commissioner
Crime Intelligence
Private Bag X302
PRETORIA
0001

Dear Commissioner Lalla,

With reference to your clandestine audio and visual monitoring of our confidential discussion on 25 August 2003, I wish to convey my utmost disgust at such underhanded conduct.

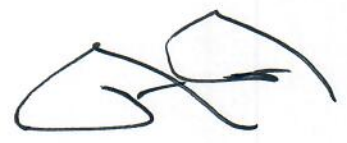
It is accepted practice amongst professionals, when it is desirable that a meeting be recorded that it be done openly.

The purpose of my meeting with you was to further the interest of justice. You came highly recommended to me by Macadam and Pretorius as a sincere and trustful colleague. Obviously they made a grave error of judgement.

Unfortunately because of this experience I am left with the firm impression that the only difference between your division and the old security regime is the change in surnames. (See the attached documents indicating previous attempts "to get rid of me"). Only time will tell if you have succeeded and whether the end justify the means.

In closing I wish to echo the answer by Oscar Wilde during his cross-examination: "Don't you have any decency?"


AR ACKERMANN
HEAD: PCLU


SM

/Z56 forms

Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
Pretoria
South Africa

INTERNAL MEMORANDUM

TO : ADV LEONARD McCARTHY
DIRECTORATE OF SPECIAL OPERATIONS

FROM : ADV AR ACKERMANN
PRIORITY CRIMES LITIGATION UNIT

DATE : 27 SEPTEMBER 2007

SUBJECT : PROJECT GNOME

Tel: (012) 845 6474
Cell: 082 495 4599

Dear Leonard

1. I shall be brief.
2. I am adamant and 100% sure that the figure "6" as reflected in the handwriting expert's document, FDC 0095/07 (Annexure "E") is not in my handwriting.
3. I am of the view that you do not need a handwriting expert to establish that fact.
4. Furthermore, it is important to note that the handwriting expert made no such finding and merely remarked:

"...with no alteration to the last figure '6'."
5. Within minutes after I had received the said memorandum from Commissioner Jacobs, I phoned him and informed him that the memorandum was forged and requested him to furnish me with the original. To date, I have not had sight of the original.
6. It is incomprehensible that somebody will post-date by three

- years the year on a document. To pre-date the year during the months of January or February is quite common.
7. I have never, on any occasion, written to Dr Ramaite in Afrikaans.
 8. The crucial question is whether any person in SAPS had a motive or reason to produce a document, emanating from the NPA, to the effect that the NPA was still investigating ANC office bearers during 2006.
 9. If no such motive exists, I must accept that the *gravamen* of the disputed document falls away.
 10. Kindly find attached hereto a letter from the Minister to Adv Pikoli.
 11. I am very interested to know which documents the National Commissioner "... produced to support his argument that indeed there is an investigation by the NPA on certain political office bearers."
 12. If the disputed document is relied on by the National Commissioner to prove that there is indeed an investigation by the NPA on ANC office bearers, then this will contradict the explanation given by Commissioners de Beer and Jacobs to the effect that since 2003, SAPS were fully aware that the disputed document had been compiled in 2003 and that an incorrect date had been inserted on it.
 13. I will not bore you with the numerous improbabilities which exist.
 14. Adv Macadam stated in his report, addressed to you and others, that I had informed him on 25 August 2007 that the disputed report had been discussed between the NDPP and the National Commissioner. That is not correct. Macadam further stated that the NDPP had informed me that the disputed report had been shown to various Ministers. That is also not correct. The NDPP and I surmised that the disputed report had probably been the document shown to the Ministers in the light of the National Commissioner's assertion that he had written proof that I was still investigating the ANC leadership. The Minister's letter sheds more light on this matter.

Regards



AR ACKERMANN



SUN

GEORGE BIZOS S.C.

Office Address:
4th Floor, Elizabeth House
18 Pritchard Street
Johannesburg 2001
Tel: (011) 836-9831
Fax: (011) 834-4273

Postal Address:
P O Box 9495, Johannesburg
2000

30
48

Your Ref:

Our Ref: George Bizos/JK

14 January 1998

TO WHOM IT MAY CONCERN:

During 1976 - 1977 I appeared at a formal inquest in the Magistrate's Court, Johannesburg on behalf of the family of Jabu Vilakazi who was killed by members of the South African Police. The prosecutor who led the evidence was Mr A R Ackermann now senior counsel in the office of the Attorney-General in Pretoria. It was contended by us on behalf of the family that members of the Brixton Murder and Robbery Unit arrested the late Vilakazi, took him for a so-called pointing out and then shot him in cold blood and that their story that they did so because he tried to escape was a fabrication. It was customary during that period for prosecutors to defend the police irrespective of the weight of evidence against them. To our surprise, Mr Ackermann's objectivity was demonstrated by submitting that the members of the Brixton Murder and Robbery Unit were criminally responsible for the death of the deceased. In my view, this was a breath of fresh air and gave one hope that despite the pressures that must have existed on a comparatively junior member of the profession, he courageously and correctly submitted what he believed to be in accordance with his oath of office. We were not alone in that belief. The Magistrate made a positive finding in accordance with Mr Ackermann's and our submissions. I have always singled him out as the outstanding exception amongst those who thought that protecting the police was more important than serving justice. Although we have lost touch, I am reliably informed that he has continued to behave in an objective and proper manner throughout his professional career. I am pleased to place on record what has been in my mind for so long.

George Bizos

[Signature]
SW

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/Z56 forms

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 Weavind Park
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 Pretoria
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Tel: (012) 845 6474

INTERNAL MEMORANDUM

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

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

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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

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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 *Blani* 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

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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

SECRET

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.

SECRET

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)

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.

SECRET

- (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")

SECRET

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

SECRET

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.

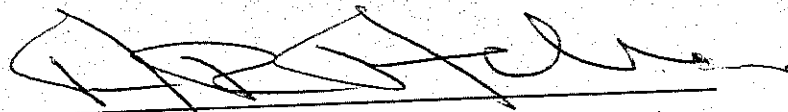
(Annexure "N")

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

SECRET

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

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

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)
Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Adv KD Moroka (SC) – DoJ representative
Adv Motlalepula Rantho (for SAPS)
Mr Tabata (for Adv B Ngcuka)

4 MARCH 2026

DAY 17

PAGES 1 – 86



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Mr Ngcuka to instruct that Britz vacate the offices of the DPP and that all the relevant SAPS dockets be removed. Britz was subsequently relocated to SAPS Crimes Against the State Unit. He requested the PCLU to provide written confirmation of the fact that the decision had been taken not to prosecute the president. When he received the letter, he tried to persuade the PCLU to reconsider its decision. I therefore believe that Britz lacks the necessary objectivity to be of assistance to the committee and that his reappointment may lead to further controversy as well as a potential leaking of information to General Van Der Merwe.”

10 ADV VARNEY: Thank you, Mr Ackermann. Can we turn to the last issue we'll deal with today? And that is the matter of the clandestine recording of your meeting with Mr Ray Lalla, who at that time was the Commissioner and Head of the Police Crime Intelligence Unit. You have made reference to this earlier in your evidence, but let us deal with it in detail now.

20 ADV ACKERMANN: Ray Lalla was a Commissioner and the Head of the Police Crime Intelligence Unit. We were desperately determined, that is now the PCLU, to find an investigating agency to investigate the TRC cases. McAdam then suggested that we ask for a meeting with Commissioner Lalla, who he described as a sincere and trustful person. He previously appeared at interaction with him.

On 25 August 2003, McAdam, Pretorius and myself had a meeting with Commissioner Lalla in his office at the Police Headquarters. At this meeting, I informed him about my dilemma not having investigators for the TRC cases and the refusal of the DSO to investigate the cases.

I also made uncomplimentary remarks about the Scorpions, the DSO, and Advocate Ledwaba. In short, I bad-mouthed the Scorpions. I cannot recall everything in detail what I said at this meeting. Fortunately, before we went into this meeting, I directed
10 McAdam and Pretorius not to say anything at the meeting because I anticipated that there is the possibility that Lala might report back to his boss, Selebi, and did not want to compromise McAdam and Pretorius.

A few months later, I received a call from Mr Ngcuka instructing me to come to his office and also to bring McAdam and Pretorius with me. From the tone of his voice, it was quite clear to me that he was very angry. Arriving at the office, we found Ramaite, Leonard McCarthy, and Mr Ngcuka sitting in front of a TV. We were ordered to sit down and watch the video recording. In short, it was an
20 audio and visual recording of the meeting in Lalla's office.

It was extremely embarrassing watching the video. We looked like the three stooges and I am doing all the talking. McCarthy and Ramaite were grinning all the time, and I do not blame them. Mr Ngcuka repeatedly asked me how could I have badmouthed his office and the Scorpions. I apologised. He carried on. I apologised

about three times. The fourth time, I gave him a piece of my mind regarding the attitude of the Scorpions.

I always had a very good relationship with Mr Ngcuka, but it was never the same again. I was very fortunate to not be suspended, and I expected to be removed from my office. I was very upset, and I think on the same day, I wrote a letter in my personal capacity to Lala.

ADV VARNEY: Let us just pause there for a moment, Commissioners. That letter that the witness refers to is in bundle 3 at
10 page 27. It is dated 16 March, 2004.

Mr Ackermann, if you do not mind, I'd like you to read that letter into the record.

ADV ACKERMANN: If you look at the right-hand corner, It is my private address. It is PO Box 136, Moreletta Plaza. I was very angry when I wrote this letter. It is addressed to Commissioner Lala, and it just follows.:

20 "Dear Commissioner Lalla, with reference to your clandestine audio and visual monitoring of our confidential discussion on 25 August 2003, I wish to convey my utmost disgust and such underhand conduct. It is accepted practise amongst professionals when it is desirable that the meeting be recorded, that it be done openly.

The purpose of my meeting with you was to further the interest of justice. You came highly

recommended to me by McAdam and Pretorius as a sincere and trusted colleague. Obviously, they made the grave error of judgement.

Unfortunately, because of this experience, I am left with the firm impression that the only difference between your division and the old regime, security regime, is a change of surnames.

10 I said: See attached documents indicating previous attempts to get rid of me. In a number of court cases, counsel wanted to get rid of me. I did give to Mr Barnier a press clipping. I do not know if they used it, but anyway, the heading of that paper clipping is actually, they tried to get rid of Ackermann or something to that effect. The only time will tell if you have succeeded and whether the end justified the means.

In closing, I wish to echo the answer by Oscar Wilde during the class examination, his class examination, do not you have any decency?"

20 And I signed it and sent it to him.

ADV VARNEY: Thank you, Mr Ackermann. Now, what do you make of that incident? What did it demonstrate to you?

ADV ACKERMANN: If I have to speculate, I think he told Commissioner Selebi about this meeting that he taped it and Commissioner Selebi then sent it to Mr Ngcuka to have put me in a

bad light or probably suspended or something to that effect. But I have not seen that. I saw it once, the tape.

But if I recall, Ngcuka told me that in a meeting, Selebi said I have a video recording where I stated I was going to arrest the president. I can't recall whether it appears on that video. That is why I asked for the police to furnish me with the video recording. I have not received anything from them, but it must be in their possession. In fact, Mr Ngcuka must also have a copy. Bottom line is I was not removed.

10 ADV VARNEY: So, as I understand it, you're really saying that the NPA leadership was very concerned about the image of the Scorpions, but that the actual subject matter, or the purpose of your discussion with Raymond Lalla, that did not seem to register with them. Could you elaborate, please?

ADV ACKERMANN: In my notes I state the following. This meeting with Lala and the subsequent showing of the tape to Ngcuka and company demonstrates two things. That they were so concerned about the image of the Scorpions that the subject matter discussed on the tape did not warrant any discussion. Namely, my desperate plea
20 to the police to assist the PCLU with the investigation of TRC cases.

I say here, one would have expected that Mr Ngcuka will say something like, I did not realise that you did not have investigations for the TRC, or Leonard, why can't you, the Scorpions, please assist with the investigations? Maybe, earlier this morning we heard Mr Ngcuka saying he said to Ramaite and Leonard they must sort out

these problems. Well, in any event, it was not sorted out.

I also read here that I say that I am of the opinion that the purpose of giving the tape to Ngcuka was just another endeavour of Celebi to get rid of me. I was certain that I was going to be suspended or at least have a disciplinary hearing.

It is of great concern to me that the police are not playing open cards with the Commission. Commissioner Lalla says the following in his affidavit to the Commission. At no stage during the whole of my SAPS career spanning the period of 1995 to 2011 did
10 either DOJ or the NDP bring any TRC docket or specific enquiry to my personal attention. It is an affidavit I got on a website.

ADV VARNEY: Thank you, and indeed you contest that claim. Is that correct?

ADV ACKERMANN: Can you repeat that?

ADV VARNEY: You contest the claim made by Raymond Lalla that at no point in his police career did the NPA bring any docket or enquiry to his attention?

ADV ACKERMANN: We did bring an enquiry. Did I find the excuse?

ADV VARNEY: Yes, this is where we are going to ask the
20 Commission to bring the proceedings to an end today. Commissioners, with your indulgence, we'd like to adjourn so that Mr Ackermann can rest in preparation for tomorrow.

CHAIRPERSON: Are you going to proceed with his evidence?

ADV VARNEY: Yes, we'd like to commence again tomorrow morning at 09:00 with his evidence.

CHAIRPERSON: At 09:00?

ADV VARNEY: Yes.

CHAIRPERSON: Okay. These proceedings are then adjourned until tomorrow morning at 09:00.

ADV VARNEY: As the commission pleases.

INQUIRY ADJOURNS UNTIL 5 MARCH 2026
