

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

INDEX: CALATA GROUP BUNDLE TO CROSS-EXAMINE ADV MPSHE SC

	DESCRIPTION	PAGE NO
MPSHE CROSS EXAMINATION BUNDLE		
1	Bundle 11: Advocate Mpshe	1 to 47
2	Calata Group application to cross-examine Adv Mpshe SC	48 to 80
3	Memorandum from DNDPP Ramaite SC to ANDPP Mpshe SC dated 25 March 2008	81 to 83
4	Extracts from Adv Simelane COI statement (Bundle 10: Adv Simelane pp 32 to 33)	84 to 85
5	Extract from Adv Macadam COI statement (Bundle 8: Adv RC Macadam p 1409)	86
6	Extracts from Adv Macadam bundle, memorandum from Macadam to NDPP dated 15 May 2003 (Bundle 8: Adv RC Macadam pp 1457-1461)	87 to 91
7	Extract from Adv Mhaga COI statement (Bundle 17: Adv Mhaga p 34)	92
8	Extracts from Dr Jacobs bundle, letter from Acting Commissioner Williams to	93 to 94

	Acting NDPP Mpshe dated 7 March 2008 (Bundle 14: Dr Mpshe pp 1808-1809)	
9	Extracts from Thembi Nkadimeng bundle, NPA answering and supplementary affidavits in <i>Nkadimeng 1</i> deposed to by ANDPP Mpshe (Calata Group Bundle Volume 4: Thembi Nkadimeng pp 1184-1264)	95 to 172
10	Adv Mpshe SC transcript 7 April 2026	173 to 241
11	Extract from Adv Ackermann SC transcript of 4 March 2026 (p 76)	242
12	Extract from Adv Ackermann SC transcript of 24 April 2026 (p 83)	243
RELEVANT COMPLETE BUNDLES		
1	Calata Group Bundle Volume 4: Thembi Nkadimeng	trc-inquiry.org.za/wp-content/uploads/2025/11/Bundle-4_Calata-Group-Volume-Thembi-Nkadimeng.pdf
2	Bundle 8: Adv RC Macadam	https://www.trc-inquiry.org.za/wp-content/uploads/2026/03/BUNDLE-8-ADV.-R.C-MACADAM.pdf
3	Bundle 10: Adv Simelane Bundle	https://www.trc-inquiry.org.za/wp-content/uploads/2026/03/SIMELANE-BUNDLE.pdf
4	Bundle 14: Dr Jacobs	https://www.trc-inquiry.org.za/wp-content/uploads/2026/04/BUNDLE-14-F.M.G-PC-JACOBS-final.pdf

5	Bundle 17: Adv Mhaga	https://www.trc-inquiry.org.za/wp-content/uploads/2026/04/BUNDLE-17-ADV.-MHAGA.pdf
RELEVANT COMPLETE TRANSCRIPTS		
1	Adv Ackermann SC transcript of 4 March 2026	https://www.trc-inquiry.org.za/wp-content/uploads/2026/03/Day-17-Adv.-Ackermann-04-03-26.pdf
2	Adv Mpshe SC transcript of 7 April 2026	https://www.trc-inquiry.org.za/wp-content/uploads/2026/04/Day-28-Adv.-Mpshe-07-04-26.pdf
3	Adv Ackermann SC transcript of 24 April 2026	https://www.trc-inquiry.org.za/wp-content/uploads/2026/05/Day-37-Adv.-Ackermann-cross-examination-24-04-26.pdf

JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES (“The Commission”).

STATEMENT OF ADVOCATE MOKOTEDI JOSEPH MPSHE IN RESPONSE TO A NOTICE IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES.

INTRODUCTION

- 1 I am an adult male South African and an advocate of the High Court of South Africa having been admitted on 29 January 1991. I am a member of the Pretoria Society of Advocates (“**PSA**”).
- 2 In 1998, I joined the National Prosecuting Authority (“**NPA**”) as a Director of Public Prosecutions in the KwaZulu-Natal (“KZN”) Province.
- 3 At this time, I was attached to the Truth and Reconciliation Commission (“**TRC**”) as Chief Evidence Leader, handled TRC amnesty cases, and scheduled all Amnesty Committee hearings.
- 4 In April 2002, I was transferred to the office of the Director of Public Prosecutions (“**DPP**”) in Pretoria where I remained until May 2006.
- 5 In May 2006, I was appointed to the position of Deputy National Director of Public Prosecutions (“**DNDPP**”) and was responsible for the National Prosecution Services (“**NPS**”).

6 While I held the position of DNDPP, I served as the Acting National Director of Public Prosecutions (“**Acting NDPP**”) from 23 September 2007 to 30 November 2009, and I took early retirement from the NPA during or about February 2010. My appointment as ANDPP was pursuant to the suspension of Advocate Vusi Pikoli as NDPP on the same date.

7 Unless the context indicates otherwise, the facts deposed to in this statement fall within my personal knowledge and are true and correct.

PURPOSE OF THIS STATEMENT

8 This statement is submitted in response to the Commission’s Notice in terms of Rule 3.3 of the Rules of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases (“**the Commission**”) dated 8 October 2025.

MY ROLE IN THE TRC

9 Before joining the TRC, I practiced as a junior counsel in Pretoria. I was then approached by Mr Dumisa Ntsebeza, who informed me that the late Archbishop Desmond Tutu wished to meet with me. Mr. Ntsebeza was at the time the head of TRC investigations, if my memory serves me well.

- 10 I duly travelled to Cape Town, where I met with the late Archbishop Desmond Tutu and other TRC Commissioners. I was offered the role of the National Co-ordinator and Chief Evidence Leader in the Amnesty Unit.
- 11 I commenced serving on the Amnesty Committee on or about October 1997. The Amnesty Unit considered applications for amnesty from all those who participated in human rights violations during apartheid era.

MY APPOINTMENT AS THE DIRECTOR OF PUBLIC PROSECUTIONS
(KWAZULU-NATAL)

- 12 While at the TRC, I was approached by the then Minister of Justice, Dullah Omar, and informed that my services were required as the Director of Public Prosecutions (“DPP”) for the Province of KwaZulu-Natal (“KZN”).
- 13 Thereafter, I was contacted by the office of the NDPP, which office facilitated my appointment to the position of DPP for the Province of KZN. I was stationed in Pietermaritzburg from about 1998 to about 2002.
- 14 As DPP, I was responsible for prosecutions in the Province. This entailed the appointment of prosecutors and working with deputy directors in the Province, all of whom reported to me.
- 15 While I was DPP for KZN, I did not come across any matters that related to the TRC.

16 I was then transferred to serve as the DPP in Pretoria from April 2002 until May 2006.

MY ROLE AS THE DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

17 In May 2006, I was appointed to the position of Deputy National Director of Public Prosecutions (“**DNDPP**”). In this position, I was responsible for the National Prosecution Service (“**NPS**”) and was based at the Head Office in Pretoria.

18 My role as Head of the NPS involved taking charge of prosecutions in the country, managing all the DPPs who reported to me in all provinces. I reported to the NDPP about matters pertaining to prosecutions.

19 During my time as the DNDPP, I was not involved in any TRC matters. These were dealt with by Mr Ngcuka, who was the NDPP, and Dr Ramaite, the Special Deputy National Director (“**SNDP**”) responsible for the Priority Crimes Litigation Unit (“**PCLU**”).

20 I served as the DNDPP until 23 September 2007, when I was appointed as the Acting NDPP. This was upon the suspension of Advocate Vusi Pikoli as NDPP.

MY APPOINTMENT AS THE ACTING NDPP

21 During my tenure as Acting NDPP, I engaged from time to time with the following persons and structures whose relevance appears later in this statement :

21.1 Senior officials within the Justice, Crime Prevention and Security Cabinet coordination structures (“**the JCPS Cluster**”), through which the NPA, SAPS, and the Department of Justice and Constitutional Development (“**the Department of JCD**”) ordinarily interfaced on operational matters requiring interdepartmental coordination.

21.2 Mr Simelane, who then served as the Director General of the Department of Justice and Constitutional Development (from around June 2005 to about September 2009).

21.3 The interdepartmental task team (“**the ITT**” or “**the Task Team**”) which was established to facilitate coordination between SAPS and the NPA in relation to TRC-related investigations and prosecutions.

21.4 The Minister of Justice and Constitutional Development.

22 When I assumed my role as the Acting NDPP, the PCLU, which handled the TRC matters, reported to Dr. Ramaite, who served as the Special Deputy National Director.

23 Adv. Ackermann, was the head of the PCLU, working with Adv. MacAdam, as the Deputy Head. Dr. Pretorius was the other member and they were later

joined by Mr. Shaun Abrahams. Adv. MacAdam was, however, from time to time, involved in special projects such as prosecuting the nuclear case and representing the NPA in the Financial Action Task Force (“**FATF**”). Advocate MacAdam returned from the FATF in June 2008 to assume the operational management functions and responsibilities of TRC matters within the PCLU. I detail below the management and operationa structure of TRC matters during my tenure.

- 24 I left the position of Acting Director of National Public Prosecutions (“**ANDPP**”) in December 2009, when Mr Menzi Simelane was appointed to the position of NDPP, and reverted to my position as DNPP responsible for the NPS.

RESPONSE TO THE ALLEGATIONS CONCERNING ME

- 25 I now turn to address the allegations that have been made against me regarding the management of TRC matters by the NPA, during my term as the Acting NDPP.

- 26 The Rule 3.3 Notice served on me records, inter alia, allegations to the following effect, and to which I respond as follows:

26.1 That soon after Mr. Vusumzi Patrick Pikoli’s suspension on 23 September 2007, I relieved Advocate Anton Ackermann of his duties in relation to the TRC cases, and that Advocate Ackermann attributes that to political instruction.

26.2 That there was little or no work on TRC cases during 2008.

26.3 That in early 2009, I summoned Advocate MacAdam to my office, showed him a letter from SAPS indicating that SAPS was withdrawing from the Inter Departmental Task Team, asked him to negotiate with SAPS to investigate TRC cases, and told him to take over the TRC cases.

27 I respond to these allegations below:

AD PARAGRAPHS 271 THE RULE 3.3 NOTICE

The allegation that I relieved Advocate Ackermann of his duties in relation to the TRC.

28 In his affidavit, Adv. Ackermann alleges that shortly after Mr Pikoli's suspension on 23 September 2007, I immediately assumed the position of Acting NDPP, and I summoned him to my office and advised him that he was relieved of his duties in relation to TRC cases with immediate effect. This is incorrect. While I confirm that I relieved Adv. Ackermann of his operational functions and responsibilities in relation to TRC matters, this did not happen immediately after my appointment, and the suspension of Adv. Pikoli. I also explain below the reason and context within which I relieved Mr. Ackermann of his operational functions and responsibilities in relation to TRC matters.

29 Soon after my appointment as NDPP, I held briefings with various stakeholders, including those that were responsible for TRC matters as mentioned in paragraph 21 above. During these engagements, it had become

apparent to me that there was much acrimony directed towards Adv. Ackermann and his management of TRC matters. In my opinion, these were personality issues. Further, during or about November 2007, I received information concerning a complaint lodged by Reverend Frank Chikane, who was the Director General of the Presidency. Reverend Chikane had been a complainant in the matter of State v Van der Merwe and Others. This matter concerned the poisoning and attempted murder by security police of Reverend Chikane by the accused. Mr Ackermann was the prosecutor in the matter. I attach hereto, marked annexure “**MJM1**”, a copy of Reverend Chikane’s complaint to the Minister of Justice and Constitutional Development, Ms Bridget Mabandla,MP. After reading the complaint and considering relevant material including the plea agreement and the press statement issued by the accused after the conclusion of their case, I became concerned that the operational management of the functions and responsibilities of TRC matters by Mr. Ackermann had become untenable because of tensions between him and the stakeholders mentioned in paragraph 21 above. I attach hereto marked “**MJM1A**”.

- 30 I fully supported Mr. Ackermann in his response to the complaint, as is fully set out in my letter to Minister Mabandla; but the perception of him by stakeholders and the acrimony directed against him remained; and this would in my considered view compromise the necessary cooperation between the PCLU and the stakeholders with whom he was required to interphase in his work relating to TRC matters. Accordingly, and with effect from November 2007, I deemed it prudent to relieve Mr. Ackermann from TRC-related duties

and responsibilities. I was however confident that this could be done without compromising the work on TRC matters as Advocate Chris MacAdam would take over the TRC operational management and responsibilities as soon as he finished his FATF project. I attach hereto my letter dated 24 January 2008 marked as annexure “**MJM2**” addressed to Minister Mabandla, wherein I confirmed Mr Ackermann’s removal and addressed the complaint against Mr. Ackermann by Reverend Frank Chikane.

31 I refer to an internal memorandum dated 05 June 2008 addressed by Adv. Ackermann to Dr. Ramaite, then Deputy National Director of Public Prosecutions, the subject matter of which is the TRC Task Team. In that memorandum, Adv. Ackermann refers to a meeting between him, Adv. MacAdam and Dr. Ramaite, which concerned new internal arrangements and allocation of functions and responsibilities for TRC matters; and confirms the following:

- That Adv. MacAdam, who had now returned from the FATF, will supervise and manage Adv. Mhaga
- That Adv. MacAdam will attend all meetings of the Task Team, and attention will be paid to all investigations registered to date, and in that regard, Dr. Bukau will also be co-opted to deal with certain matters
- That prosecutors will not perform functions that will usurp the duties of the SAPS and NIA

- That the PCLU, as contemplated by the guidelines, will be responsible for operational management of TRC matters under the supervision of Dr. Ramaite and that of the NDPP.
- The memorandum deals with TRC matters, such as the Pebco Three case. I attach a copy of the internal memorandum marked “**MJM3A, MJM3B, MJM3C, MJM3D**”. It is noted that these internal arrangements concerning TRC matters were being implemented under the overall supervision of Mr. Ackermann.

32 I refer to an internal memorandum dated 9 June 2008 addressed to me by Adv. MacAdam, relating to TRC cases wherein he discusses the NPA annual plan that required the PCLU to formulate an action plan for the prompt and effective disposal of TRC cases, Adv. MacAdam in the internal memorandum that as a consequence of the action plan decision, Adv. Ackermann and him had meetings with Adv. Mzinyathi and Dr. Ramaite, pursuant to which an agreement was reached that Adv. MacAdam should attend the Task Team meetings as well as any strategic discussions involving Dr. Ramaite and I. I attach a copy of the memo marked annexure “**MJM3E**”

33 The next email is dated 09 July 2008, it is from Ms Helena Zwart, who was an assistant in the office of Adv Ackermann and Adv. MacAdam. Its subject matter is also TRC matters and is addressed to Adv. Ackermann. The email lists several TRC matters which Adv. MacAdam requests Adv. Ackermann to address during his absence the following week. I attach the email marked as annexure “**MJM4**”.

- 34 The next memorandum is dated 01 October 2008 from Adv. MacAdam addressed to Dr. Ramaite and copied to Adv. Ackermann, and deals with the TRC case of Dr. Anton Lubowski. I attach the email as annexure "**MJM5**".
- 35 On 10 December 2008, Adv. MacAdam addressed an email to Dr. Ramaite, in which Adv. Ackermann is copied, and the email reports on TRC issues of the year 2008, and notes that the majority of matters referred to therein can only be taken forward with the assistance of SAPS and NIA. It further recommends that, as a matter of urgency in 2009, a meeting should be set up with the acting NDPP Adv. Ackermann and Adv MacAdam to obtain the NDPP's approval on the way forward. I attach a copy of the email marked "**MJM6**".
- 36 The memoranda referred to above are a contemporaneous record and reflect that Adv. Ackermann was months after my appointment as ANDPP, allocating operational management functions and responsibilities relating to TRC matters: This after consultation with Dr. Ramaite, who was the DNPP responsible for the PCLU and TRC matters. Mr Ackermann therefore retained his supervisory role over the staff dealing with TRC matters within the PCLU. I had no objections to this arrangement.

THE TRC PORTFOLIO AND ROLE ALLOCATION (AD PARAGRAPH 302 OF RULE 3.3 NOTICE)

- 37 I deny that I stopped or intended to stop the investigation or prosecution of TRC matters, whether by instructions, policy formulation, or any stratagem; or

that I acted on any improper political instruction, or that I participated in any collusion to suppress the investigation and prosecution of TRC matters.

38 I have already explained that I did not engage in any matters relating to the TRC which were being considered by the PCLU.

39 While I was Acting NDPP, I had no reason to believe that there was any interference with prosecutorial discretion. This is supported by reports that were tabled at meetings I attended with the leaders of various units, including the PCLU. To the extent that there were delays, inactivity, or limited progress in any matter during my tenure as the Acting NDPP, those circumstances must be understood against the practical constraints that existed at the time. The prosecution of complex historical matters is ordinarily dependent on complete investigation dockets, the identification and location of witnesses, sufficient admissible evidence, and the ability of the investigative authorities to prioritise and execute the required investigative steps. Challenges in interdepartmental cooperation and coordination may therefore have affected capacity and timing. Those constraints do not, without more, amount to interference with prosecutorial discretion. There were however constraints regarding the availability of investigators because the SAPS management and the NPA differed in the interpretation of each other's roles in the implementation of the NPA Policy and Guidelines.

TRC CASES DURING 2008 (AD PARAGRAPH 305)

40 The rule 3.3 notice records an allegation that little or no work was done on TRC cases during 2008.

41 I do not accept that the position can properly be reduced to a simple assertion that “no work” was done or that matters were “left unattended.” The available contemporaneous documentary record reflects internal management and supervision arrangements concerning TRC matters within the PCLU during 2008, including the arrangements recorded in MJM3 annexed above.

42 I further record that any material progress in TRC prosecutions depended on investigative cooperation, docket readiness, and resourcing, all of which were not within the unilateral control of the NPA.

43 To the extent that it is contended that any alleged inactivity in 2008 is itself proof of intentional suppression or collusion, I deny that inference.

44 I dispute that it is factually correct or that it can be assumed that little or no work was carried out by the NPA, SAPS, or DSO on the TRC cases during 2008. I have referred above to internal memoranda from “MJM3 to MJM7” as examples showing that work was being done during 2008 regarding TRC matters. These are merely examples and are not exhaustive. In addition to that, I attach my report to then Minister of Justice and Constitutional Development of the TRC work that was done during the relevant period, marked as Annexure “**MJM7**”. I also attach hereto a memorandum marked

“MJM8” dated 28 May 2009 addressed to Minister Jeff Radebe in which I report on the Pebco three matter. The last page of the memorandum is however missing and will be furnished as soon as I find it.

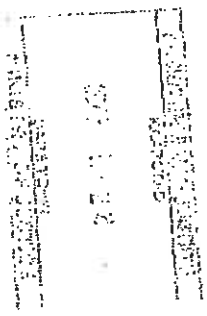
CONCLUSION

- 45 For the reasons set out above, I deny that I did anything to stop, suppress, or improperly interfere with TRC-related investigations or prosecutions.
- 46 I have responded to the allegations in the rule 3.3 notice as fully as I am presently able to do so on my personal knowledge and on the documents presently available to me.
- 47 From my knowledge and involvement in TRC matters, I deny that there was any political suppression or interference with prosecuting any TRC related matters.

MOKOTEDI JOSEPH MPSHE

18 March 2026

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mimi



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA
Private Bag X1900, Pretoria, 0001

22 October 2007

Ms Brigitte Mabandla, MP
Minister of Justice and Constitutional Affairs
Private Bag X276
PRETORIA
0001

Dear Minister:
STATE V VAN DER MERWE AND OTHERS

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

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

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

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

W.M. [unclear]
Assistant

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

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

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

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

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

*v. Mkhaga
I agree with
exam. but I
worry*

~~Not true~~
was present
No threats
made in
my
presence

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

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

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

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

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

Sincerely Yours,



FRANK CHIKANE
DIRECTOR-GENERAL

COPY

1666
MJDZ
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Office of the
National Director of Public
Prosecutions



The National Prosecuting Authority of South Africa
Igunya Jikelele Labeshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

24 January 2008

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Ms B Mabandla, MP
Minister of Justice & Constitutional Development
Private Bag X276
PRETORIA
0001

Dear Minister

REPRESENTATIONS: REV FRANK CHIKANE

As requested, find herewith my response to the complaints raised by Rev Chikane in his letter, dated 22 October 2007, addressed to you. I intend dealing with these matters *seriatim* as I have numbered the paragraphs 1 to 12 (a numbered copy of Rev Chikane's letter is attached hereto for ease of reference as **Annexure "A"**).

Ad par 1

I have no comments.

Ad par 2

I have no comments.

Ad par 3

1. The officials who dealt with post-TRC matters during the relevant period were:
 - (i) Adv Vusi Pikoli;
 - (ii) Dr MS Ramaite;
 - (iii) Adv AR Ackermann; and
 - (iv) Adv MC Mhaga.



2. As a result of this letter and the prominent role played by Adv Ackermann, I have deemed it prudent to relieve him from all TRC-related duties since November 2007.
3. As you are aware, Adv Pikoli has been suspended and his future role is presently the subject of the Ghinwala Inquiry.
4. I have decided that all future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga and the TRC Task Team.

Ad par 4

Both Advocates Ackermann and Mhaga deny that there was an acrimonious argument. See also par 5 *infra*.

Adv Ackermann admits that he had some concerns about the Guidelines and in a number of official memoranda, raised his concerns on the constitutionality thereof. Despite reservations, he diligently applied the criteria as stipulated in the Guidelines. With the wisdom of hindsight, it appears that there was some merit in Adv Ackermann's reservations. Indicative thereof is the institution of a civil action in the High Court, challenging the validity of the TRC Guidelines. (See ***Nkadimeng & Others v the NDPP and the Minister of Justice & Constitutional Development*** (Case No 32079/07).

Ad par 5

1. The gravamen of Rev Chikane's complaint is his perception of being used as a pawn in a battle between Government and the NPA. No mention is made of any specific Government department.
2. Rev Chikane further states that he was presented with a pre-drafted letter, which in his view was compiled in such a manner as to enhance the NPA's position in this so-called battle.
3. Adv Ackermann confirms that a pre-drafted letter was indeed presented to Rev Chikane after the former had explained the letter's *rationale* to Rev Chikane.
4. It is deemed necessary to briefly explain the background which led to the presentation thereof to Rev Chikane:
 - (i) In December 2004, prior to the drafting of the TRC Guidelines, Adv Ackermann had a consultation with Rev Chikane where *inter alia* the intended prosecution was

discussed. During this consultation, Rev Chikane fully agreed to the said prosecution.

- (ii) During December 2005, the TRC Guidelines came into operation. In terms of par A.4 thereof, the views of a victim are one of the factors to be taken into consideration prior to the institution of a prosecution.
- (iii) The TRC Guidelines provide for perpetrators to make representations to the NDPP. The perpetrators in *S v Van der Merwe & Others* submitted representations through their legal representative, which were dealt with by the NDPP and Dr Pretorius. Adv Ackermann was not involved in this process at all.
- (iv) After the conclusion of the process, Adv Pikoli instructed Adv Ackermann to proceed with the prosecution in terms of the Guidelines. Adv Pikoli also informed Adv Ackermann that Rev Chikane had been consulted and had intimated that the legal process should take its course.
- (v) During a TRC Task Team meeting thereafter, the representative of the SAPS informed the meeting that according to National Commissioner Selebi, Rev Chikane was against the intended prosecution.
- (vi) After Adv Ackermann had once again enquired from Adv Pikoli as to Rev Chikane's attitude to the intended prosecution, Adv Pikoli then once more contacted Rev Chikane, who apparently confirmed his previous views on the matter. Adv Pikoli thereafter instructed Adv Ackermann to immediately schedule a consultation with Rev Chikane and to arrange for Adv Mhaga to accompany him to this consultation.
- (vii) In order to prevent any further confusion regarding Rev Chikane's attitude as far as the intended prosecution was concerned, Adv Ackermann deemed it imperative to obtain his written views.
- (viii) Since Rev Chikane had conveyed his attitude to Advocates Pikoli and Ackermann on numerous occasions, the latter took the liberty of drafting a letter in Rev Chikane's name (a copy of which is attached hereto as **Annexure "B"**.)

- (ix) Upon presentation of the letter, Rev Chikane refused to append his signature thereto and declined the suggestion to formulate his views in writing.
5. With regard to Rev Chikane's alleged claims of threats by Adv Ackermann during this meeting, the latter vehemently denies having threatened Rev Chikane in any manner. On the contrary, Adv Ackermann is of the view that he had a very pleasant meeting with Rev Chikane. Adv Mhaga, who was at all times present, also denies having witnessed any threats during the meeting. Adv Mhaga is further of the view that the interaction between the parties was conducted in a very amicable manner. Both Advocates Ackermann and Mhaga are of the view that no animosity was revealed by either of the parties during the meeting.

Ad par 6

Adv Ackermann admits not having consulted with Rev Chikane on the details of the Plea & Sentence Agreement. Adv Chikane was however informed of the proposed suspended sentences.

However, in various newspaper articles, after the conclusion of the trial, Rev Chikane publicly expressed his satisfaction with the proceedings (**Annexure "C"**).

With regard to the concerns raised by Rev Chikane relating to the stated policy of the UDF, it is important to note that in Plea & Sentence Agreements, the version of an accused person also has to be incorporated.

The following *dicta* in **S v Esterhuizen 2005 (1) SACR 490 at 494 e – h** is apt in explaining plea bargaining in terms of Section 105A of Act 51 of 1977:

"e

....
Indeed it will often be so, once plea negotiations are entered into, that the accused's defence will also be known to the State. The contents of the State's dockets and the strength of the State's case will be known to the accused.

f

It must be so that substantial room for an adjustment of the charges (including the withdrawal of certain charges and the possible acceptance of competent verdicts on other charges) is open to the State. It must also be clear that in the give and take of negotiations, an accused person may tender in the negotiation to plead guilty to a charge of which that accused person is guilty, but in respect of which the State may have had considerable difficulty in achieving a conviction.

g

h *In return for the concession of a plea of guilty to a charge difficult to prove, it must be so that the Legislature has envisaged that the bargaining mechanism would bring home a result which satisfies the interests of justice. These would be that where a crime has been committed a conviction has been achieved. The price may be that the sentence which would normally flow from the commission of such a crime is lower than might otherwise have been imposed. This does not mean that justice has not been achieved."*

Ad par 7

It is incorrectly stated by Rev Chikane that his background had been presented as though he held the position of General-Secretary of the SACC and Vice President of the UDF simultaneously.

Par 28 of the English version of the Plea & Sentence Agreement states:

"... he was, inter alia the Secretary General of the South African Council of Churches and the Vice President of the United Democratic Front".

The use of the term "inter alia" clearly denotes that Rev Chikane held these two positions at a particular point in time in his life and not simultaneously.

Ad par 8

Withdrawal of Count 2

Count 2 was included as a legal tactical strategy to *inter alia* have key evidence admitted should the accused have pleaded not guilty. In any event, the available evidence which the prosecution relied on is in the public domain (See **S v Wouter Basson**).

The list

I am informed by Adv Ackermann that extensive attempts have been made to obtain knowledge of the contents of the list. He even went as far to use it as a bargaining tool not to accept any plea agreement. All avenues to obtain the list have been explored. Matters of this nature would not form part of a plea agreement.

The legal representative of the accused in the plea agreement categorically stated that none of the accused recalled the listed names.

Discussions with Smit and Basson

Basson has on numerous occasions publicly declared his innocence, most recently, during his hearing at the Medical Council.

Discussions were held between Smit's legal representative and Adv Ackermann. Smit denied any knowledge or involvement in these crimes.

One of the conditions negotiated by Adv Ackermann and which forms part of the Plea Agreement in *S v Van der Merwe & Others* is that the accused had undertaken to testify against Smit.

In August 2007, Adv Ackermann requested the NDPP's authorisation to proceed with an investigation against Basie Smit (See Annexure "D").

SADF Involvement

Dr Pretorius had extensive consultations with members of the SADF in this regard.

Ad par 9

The NPA is in full agreement with the sentiments expressed by Rev Chikane, save for the last sentence.

Ad par 10

A further complaint raised by Rev Chikane was that "*the Court was completely white, from the Judge to the Prosecutors, defence lawyers and the accused.*"

This is unfortunate, but the following should be noted:

- (i) The prosecutor, Adv Ackermann, was appointed and directed to do these cases by the former NDPP, Mr B Ngcuka. This was later endorsed by Adv Pikoli.
- (ii) The Judge President, the Honourable Mr Justice B Ngoepe, appointed the judge who presided over the trial.
- (iii) The accused had a right to be represented by a legal representative of their own choice.
- (iv) The prosecutor had no control over who the accused were.

With regard to the complaint of the proceedings having been conducted in Afrikaans, Adv Ackermann took the following pro-active measures in ensuring that the court proceedings would be accessible to the gallery:

The indictment, sentence and plea agreement as well as his address to the Court were translated into English and 40 copies thereof were distributed to all stakeholders prior to the commencement of the trial.

It would have been prudent for a court interpreter to be present to translate the proceedings. This would have made the proceedings more victim-friendly.

Ad par 11

I do not have any comments on Rev Chikane's opinion in this regard, save to state that the NPA did not act unilaterally.

Yours sincerely



ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS

/Z56 forms

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South Africa

INTERNAL MEMORANDUM

**TO: DR MS RAMAITE SC
DEPUTY NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

**FROM: ADV AR ACKERMAN SC
SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
AND HEAD: PCLU**

SUBJECT: TRC TASK TEAM

DATE: 5 JUNE 2008

Dear Dr Ramaite

With reference to the meeting between you, Adv Macadam and myself earlier this morning, I confirm the following:

**Tel: (012) 845 6431
Cell: 082 498 6033**

1. That Adv Macadam will supervise and manage Adv Mhaga's activities in respect of TRC matters;
2. That Adv Macadam will attend all meetings of the Task Team;
3. That Adv Macadam will be involved in all high level discussions with the Acting NDPP in connection with TRC matters;
4. That attention will be paid to the status of all investigations registered to date and in this regard, Dr Bukau will also be co-opted to deal with certain matters;
5. That the prosecutors will not perform functions which will usurp the duties of SAPS and NIA;

6. That the PCLU, as contemplated by the Guidelines, will be responsible for the operational management of TRC matters under your supervision and that of the NDPP.

An additional matter which I wish to bring to your attention is the Pebco 3 matter, where the accused are due to appear on a final remand in the Port Elizabeth High Court on 5 August 2008. The accused had, since 2004, appeared in the High Court on indictment, but on each occasion, the matter has been postponed, due to the fact that the review of their refusal of amnesty by the TRC has not been finalized. The DoJ&CD is responsible for compiling a record and enrolling the review before the TPD. To date, this has not taken place and on each occasion when we take this matter up, we are informed that documents are missing, etc. On more than one occasion, we had been asked to consider withdrawing the criminal case, because of the problems with finalizing the review.

The fact that the matter has not gone to trial is of considerable distress and dissatisfaction with the victims. They have complained to the Minister and have also displayed their dissatisfaction at court on the dates of the postponements.

A decision must be taken as to how the next court appearance will be managed. We believe that this should first be discussed between ourselves and the Acting NDPP, whereafter the Task Team must be consulted and thereafter, a memorandum submitted to the Minister.

Our *prima facie* views are that the Court would not grant another postponement and in any event, this would not be acceptable to the victims. The review is only for the benefit of the accused and one option would be to proceed with the prosecution. We however believe that a judge is highly unlikely to order a trial when the accused has the opportunity of receiving amnesty and is in no way to blame for the failure to have the review process finalized. We would also have to establish whether the matter is in fact at this stage ready for trial, since the witnesses were last consulted almost five years ago. The Court may require or we would be obliged to call someone senior from the DoJ&CD to testify under oath as to the reasons for the delay with the review. We see both the NPA and the DoJ&CD being criticized severely by the victims and the media.

Kind regards



AR ACKERMANN

MJM 30 27

TRC COMMITTEE MEMBERS

NAME	DEPT.	CONTACT No.	EMAIL	
Anton Ackerkmann	NPA (FCLU)	012-845 6474	arackermann@npa.gov.za	
Mthunzi Mhaga	NPA (FCLU)	012-845 6398	mcmhaga@npa.gov.za	
Dr S Ramaite	NPA (NSSD)	012-845 6765	msramaite@npa.gov.za	Convenor
Marlyn Raswiswi	Justice	012-315 1730 0826600463		
Yvonne Mabule	NIA	012-427 4498 0827872853	yvonnem@nia.gov.za	
Philip Jacobs	SAPS	012-395 0063	jacobspe@saps.gov.za	
Josias Lekalakala	SAPS	0825745870	mlekalakal@telkomsa.net	
Brian Koopedi	NIA	012-4262602 0824168357	bkoopedi@nia.gov.za	
AT Mngwenwe	NPA(DSO)	012-845 6470	atmngwenwe@npa.gov.za	
NVE Ngidi	NPA(DSO)	012-845 6401	nvenngidi@npa.gov.za	
		PRINCIPALS		
Adv Vusi Pikoli	NPA(NDPP P)	012-845 6758		
Kalyani Pillay	NPA	012-845 6749		
Loyiso Jafta	Presidency	012-300 5458		
M Simelane	DG justice	012-315 1730		
ME Manzani	NIA			

5. Nov. 2006 12:08

PCLU 27 12 8456337

No. 2899

P. 2

⑤

MSM 28

MINUTES OF TRC COMMITTEE MEETING 12 October 2006Members Present:

1. Adv Vusi Pikoli (NPA)
2. Adv Kalyani Pillay (NPA)
3. Mr ME Manzini (NIA)
4. Mr Loyiso Jafta (PRESIDENCY)
5. Mr Simelane (DG JUSTICE)
6. Dr Ramaite (NPA & Convenor)
7. Adv Anton Ackermann (NPA)
8. Comm. Philip Jacobs (SAPS)
9. Mr Brian Koopedi (NIA)
10. Mr NVE Ngidi (DSO)
11. Mr AT Ngwengwe (DSO)
12. Ms Yvonne Mabule (NIA)
13. Ms Marlyn Raswiswi (JUSTICE)
14. Mr Josias Lekalakala (SAPS)
15. Mthunzi Mhaga (NPA)

Apologies : none— National Commissioner.

1. Opening Remarks by the NDPP who gave a detailed background of the cases emanating from the conflict of the past with particular reference to TRC matters. He indicated that the establishment of the committee is derived from the policy guidelines which were approved by parliament in December 2005 on prosecution of all TRC matters. The NDPP had attended a meeting with DGs from SAPS, NIA, justice and a representative from the office of the Presidency where it was decided that a committee should be established. Cases in possession of PCLU and SAPS have to be identified and an update on their status is also required. SAPS has to provide investigating officers for all cases identified for prosecution. The NDPP emphasised the fact that he will decide on each prosecution and not the committee. The role of the committee will be to make recommendations to the NDPP on each case.
2. Mr Manzini indicated that these cases need to be prioritised and the process needs to be fast tracked.
3. Dr Ramaite indicated that there is a need for a task team of investigators to work on these cases.
4. The NDPP further indicated that Dr Ramaite is the convenor for the committee and the PCLU will report to Dr Ramaite directly.

Ms. G. Z. M.

3. May 2006 17 08

PCLU 27 12 8456337

No 2599 P 3

The meeting was then closed after the NDPP asked the committee to meet after the meeting with the Principals.

Committee Meeting

Dr Ramaite requested PCLU and SAPS to compile an audit report of all cases in their possession and that the PCLU will take charge of investigations being assisted by SAPS. The committee will then deal with all cases including matters that have been closed by the PCLU. Mr Ngidi indicated that committee members will not be rubber stamper to decisions already made by the PCLU and he was supported by Mr Koopedi who said they are prepared to go through volumes of records in all cases.

Mthunzi was then mandated to arrange a suitable date for the next meeting. Indeed a date was arranged for the 25/10/2006 at the DSO boardroom.

Handwritten signature and scribble in the bottom right corner of the page.

mjm30

Helena H. Zwart

From: Helena H. Zwart
Sent: Thursday, June 05, 2008 1:20 PM
To: Silas Ramaite
Subject: TRC Task Team

Dear Dr Ramaite

Attached please find a memo from Adv Ackermann, addressed to yourself.

Regards

Helena

5/5/2008



m3m3D

/Z56 forms

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 Hartley St.
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INTERNAL MEMORANDUM

TO: DR MS RAMAITE SC
 DEPUTY NATIONAL DIRECTOR OF PUBLIC
 PROSECUTIONS

FROM: ADV AR ACKERMAN SC
 SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
 AND HEAD: PCLU

SUBJECT: TRC TASK TEAM

DATE: 5 JUNE 2008

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5. That the prosecutors will not perform functions which will usurp the duties of SAPS and NIA;

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Cell: 082 498 6033

6. That the PCLU, as contemplated by the Guidelines, will be responsible for the operational management of TRC matters under your supervision and that of the NDPP.

An additional matter which I wish to bring to your attention is the Pebco 3 matter, where the accused are due to appear on a final remand in the Port Elizabeth High Court on 5 August 2008. The accused had, since 2004, appeared in the High Court on indictment, but on each occasion, the matter has been postponed, due to the fact that the review of their refusal of amnesty by the TRC has not been finalized. The DoJ&CD is responsible for compiling a record and enrolling the review before the TPD. To date, this has not taken place and on each occasion when we take this matter up, we are informed that documents are missing, etc. On more than one occasion, we had been asked to consider withdrawing the criminal case, because of the problems with finalizing the review.

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Kind regards



AR ACKERMANN



TRC File

MJM 1681
33

IZ56 forms

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INTERNAL MEMORANDUM

TO: ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

FROM: ADV RC MACADAM
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
AND DEPUTY HEAD: PCLU

SUBJECT: TRC CASES

DATE: 9 JUNE 2008

Dear Adv Mpshe

The NPA Annual Plan required of the PCLU that it formulate an action plan whereby TRC cases would be promptly and effectively disposed of. More specifically, I was appointed to manage this plan.

As a consequence thereof, Adv Ackermann SC and I met firstly with Adv Mzinyathi SC and thereafter with Dr Ramaite SC. Dr Ramaite SC agreed that I should attend the Task Team meetings as well as any strategic discussions involving himself and you. I also recommended that Dr Bukau be involved so as to assist Adv Mhaga on an operational level.

Dr Ramaite SC is not available for the remainder of the month. There is however one matter which requires urgent attention, namely the *Pebco 3* prosecution. The accused in this matter appeared on indictment in the Port Elizabeth High Court in 2004. On every occasion that the matter has been in court, it has been postponed so as to enable the review of the refusal of the amnesty to be heard by the full bench of the TPD. Last year, the

matter was postponed as a final date to 5 August 2008. The responsibility for arranging the review lies with the DoJ&CD.

To date, no date for the hearing has been fixed, although Adv Ackermann SC and I were given the assurance that this would be either early or mid- 2008. Obviously, the Judge President would not be able to convene a full bench to hear the review between now and 5 August 2008. It would be enormously damaging for the Pebco 3 matter to be struck from the roll due to a failure on the part of a State department. In my view, the only way in which a postponement can be obtained is if a date for the review is set for the third or fourth quarter of this year's court sessions.

Although I intend taking up the matter with Tessie Bezuidenhout as a matter of urgency, I would recommend that you contact the Director General: DoJ&CD and request him also to ensure that the matter is expedited.

Another matter which requires attention is the status of the criminal investigation. As I recall, the matter was brought to court as a DSO investigation, but the investigators have now resigned. Consideration will have to be given to either appointing new investigators or to the matter being referred to SAPS. The reason why this is important is that the State may be required to demonstrate that it is ready to proceed with the prosecution on 5 August 2008.

Kind regards

RC MACADAM

Noted

18/08/08

MSM4

Helena Zwart (H)

From: Helena H. Zwart
Sent: 09 July 2008 04:41 PM
To: Anton R. Ackerman
Subject: TRC work
Importance: High

Dear Anton

While I am out the office next week, I recommend that you oversee the following work on TRC matters:

1. Pebco 3:

- 1.1 Tessie Bezuidenhout promised to come to the office so that an affidavit can be compiled confirming the fact that the record of the review had been filed with the High Court and giving reasons for the fact that this was not done already. She must be contacted and arrangements made for the affidavit to be compiled.
- 1.2 Adv Bukau was given a copy of my letter to Koole's attorney, placing certain facts on record and confirming that it was in his client's best interests that the matter be postponed. She should contact him and obtain a written confirmation.
- 1.3 Jan Wagener undertook to furnish an updated medical report in respect of Van Zyl, confirming that he is not fit to appear in court and also indicating that the matter should be postponed pending the review. I did not have time this week to meet again with him. However, one of the advocates should meet with him and resolve these issues. He has a spare copy of the CD which should be collected from his office.
- 1.4 Marion is meeting with the victims in PE from 20 – 22 July 2008. I have asked him to contact Madeleine to get the details of the victims support group which the Minister appointed to work with the families and that he should liaise with them in his contact with the families. I had also raised the desirability of Adv Mhaga being present in PE at the same time to meet with the families and explain the reasons for the further postponement of the matter.
- 1.5 It must also be established by Marion whether Venter and Mogai are still available and confirm their statements.
- 1.6 Consideration must be given to whether it is necessary for Marion to also submit an affidavit for use at the Court hearing. This would be to confirm that the witnesses, upon whose strength the prosecution was instituted, are still available.
- 1.7 Christo Nel indicated that the matter will be heard before either Jansen J or Liebenberg J and that he did not foresee that there would be any objection to a postponement. According to Jan Wagener, the earliest date for the review would be November 2008. It is likely that judgment would be reserved and probably only handed down in February 2009. Further, according to him, the party losing the review would definitely appeal to the SCA. It is therefore desirable that the matter again be postponed to August 2009 so as to enable the appeal to be finalised.
- 1.8 Van Zyl never applied for amnesty for assault. Therefore, even if the review was decided in his favour, he would still face prosecution on the assault charge. Koole has not applied for a review and therefore, can still be prosecuted for kidnapping and assault. If all of the urgent matters have been addressed, then the advocates should be instructed to locate the missing evidence in the docket. Andrew Leask has indicated that a member of his staff can download the data on "Eagle I". I have given Adv Bukau Leask's email, containing her contact details. Wagener's disk should also be perused. It would appear that Piet Jonker at one stage made material available for the purpose of compiling the record of the review. Arrangements should be made with Tessie Bezuidenhout for one of the advocates to review the documentary evidence which forms part of the review since certain of the missing portions of the docket could be filed there. A comprehensive memo should be compiled, setting out in a systematic

manner all further investigations necessary should the matter go to trial. The arrangement with the DSO as far as Marion is concerned is merely to confirm the availability of the witnesses upon whose evidence the decision to prosecute is taken. A new investigating officer would have to be appointed, so the instruction would have to be written in such a manner that a newcomer would be able to identify what is required. An executive summary of all the evidence should be compiled.

1.9 The evidence given by the State witnesses should be perused to establish whether there are any contradictions between such evidence and their statements in the docket. Any such contradictions should be described in detail and an opinion expressed as to whether they are fatal as far as the witnesses' credibility is concerned.

2. Anton Lubowski

2.1 Late last year, Mrs Lubowski requested her husband's murder to be reinvestigated and alleged that an explanation should be provided why Torie Pretorius and Neels de Lange did not follow up evidence which her attorneys had provided earlier to them.

2.2 Adv Mhaga apparently had meetings with various people. He should compile a comprehensive report, describing in detail what was conveyed to him by them and what follow-up actions, if any, were undertaken by himself. He should also file any documents acquired by him and should submit a report, setting out the relevance of such documentation.

2.3 A convicted diamond smuggler, Courtney Clark, repeatedly phoned Helena, requiring an appointment with me to arrange *inter alia* the arrest of Torie Pretorius. He was informed that I could not speak to him as I was not authorised to gather intelligence. Peter Bishop of the DSO also contacted him and explained that any allegations would have to be made to an investigating officer and followed up according to police procedures. Today, his advocate phoned me and I advised her that if he had any information on the Lubowski matter, he should reduce it to writing and submit it to her. She should peruse it and submit it to the PCLU if she considers it relevant to the Lubowski matter. It was specifically explained to her that any allegations could only be followed up by SAPS. It was explained to her that only Namibia had jurisdiction for acts committed in that country and that consideration could only be given if evidence was presented of a conspiracy formulated in South Africa as a result of which Achesen committed the murder. I pointed out to her that to date, no such evidence has been forthcoming and she agreed that it was unlikely that there would be a breakthrough.

3. St James/Heidelberg Tavern

3.1 The documentary evidence relating to these matters in a box under the table next to the safe should be analysed and a comprehensive report compiled, identifying all aspects thereof that would be relevant to Mphahlele.

3.2 The amnesty hearings are on the Justice website. An advocate must be appointed to peruse the evidence of the applicants in order to establish to what extent they implicate Mphahlele in the attacks.

3.3 Most of his claims to have ordered the attacks were made to the media. A comprehensive memorandum, setting out the law relating to the admissibility of this evidence must be compiled. Particular attention must be paid to the fact that the media will claim privilege and how this claim can be dealt with.

3.4 A detailed memorandum outlining all further investigations must be compiled.

3.5 His book is also in the office and must be read in order to determine its relevance to the investigation.

4. Simelane matter

4.1 A detailed analysis of the evidence in the docket must be conducted, identifying problem areas including legal issues and all aspects requiring investigation.

- 4.2 The TRC evidence must be analysed in order to establish whether it materially contradicts the statements in the docket.
- 4.3 A detailed analysis must be made of Howard Varney's report and the merits of his points in favour of a prosecution carefully analysed.

Kind regards

Chris



Helena Zwart (H)

From: Helena H Zwart
Sent: 01 October 2008 04:32 PM
To: Anton R. Ackerman
Subject: FW: Anton Lubowski

FYI

From: Helena H. Zwart
Sent: 01 October 2008 04:31 PM
To: Silas Ramaite
Subject: Anton Lubowski

Dear Silas

As you are aware, we forwarded a letter to Mrs Lubowski informing her that the allegations that her husband was murdered as a consequence of a conspiracy formulated in South Africa would have to be investigated by SAPS within the TRC Guidelines framework, but that this process cannot be taken forward until the Task Team reconvenes. In response, she has briefed an advocate to pursue legal options open to her to compel the NPA to act. I have had two lengthy conversations with the advocate, explaining to him the need for proper investigations to be conducted before any decision can be taken and pointing out to him the fact that executive direction is necessary before the Task Team can function. He will now take further instructions from the family, but obviously, we will be at a later stage again brought under pressure and may well face legal challenges which could place us in an embarrassing position.

My assessment of the matter is as follows:

1. There is no evidence of a conspiracy upon which a successful prosecution can be conducted.
2. Some considerable time ago, the D'Oliveira Investigation Unit obtained statements from the Namibian Police who investigated the deceased's murder and also obtained affidavits or conducted interviews with former SADF operatives and/or commanding officers. Various conflicting allegations were made by former CCB members, pointing to an involvement of the CCB with the murder of Lubowski. No proper attempt was made to reconcile these versions and more significantly, information obtained during interviews was never followed up by obtaining affidavits and corroboratory evidence. The upshot of all of this is to justify a suspicion that the deceased was in fact killed in pursuance of a CCB conspiracy, but one is left entirely in the dark as to where the conspiracy was formulated and who the conspirators were. It is common cause that prior to the change of Government in 1994, the former security forces destroyed all sensitive documentation.
3. In the light thereof, I believe that it is highly unlikely at this stage that evidence would emerge which would justify a successful prosecution. However, because we are dealing with a human rights abuse and our Constitution requires of us to conduct our business in a manner which upholds human rights, we are obliged to direct the police to follow up and obtain finality on these outstanding issues so that if we make a decision not to prosecute, we can justify this decision on the basis that there is no outstanding evidence.
4. Normally when we make a decision not to prosecute, we make all the evidence available to the family so that they can decide whether they do not want to obtain a certificate *nolle prosequi*. We might also face a request in terms of the Access to Information Act. Although I have said that the evidence is contradictory, it is highly sensational in that it implicates former generals and suggests that foreign assassins were paid out of State funds and that State structures were used to frustrate the Namibian investigations. This would obviously be sensational newspaper reporting. In my view, Government would have to be properly briefed on all these allegations before any release to the family, but it would only be appropriate for such a briefing to be given once all the outstanding investigations have been clarified.

All of the above emphasises the need to have finality on these TRC matters and I recommend that you advise the Acting NDPP accordingly

Kind regards

Chris Macadam

Helena Zwart (H)

From: Helena H. Zwart
Sent: 10 December 2008 01:36 PM
To: Silas Ramaite
Cc: Anton R. Ackerman
Subject: TRC matters
Importance: High

Dear Silas

This serves to provide a recap of 2008's issues:

1. No fresh cases requiring investigation were reported after the Lubowski matter in December 2007.
2. The Ginwala Commission report did not make any findings which would justify holding the work on the TRC cases in obedience. The Ginwala report indicates that Government's complaints were confined to the Van der Merwe matter and that Government subsequently indicated that Government elected not to pursue their complaints. The Commission noted Adv Pikoll's statement that the Task Team was there to assist the NPA in making decisions.
3. The constitutional challenge to the Guidelines was argued on 24 November 2008, but judgment has been reserved.
4. As at November 2008, both SAPS and NIA indicated their willingness to again commence work on TRC matters. I recommended an in-house meeting with them prior to the close of business this year, but it would appear that it is impractical that this would take place before 2009.
5. The breakdown of individual cases is as follows:

5.1 *S v Van Zyl & Koole* (kidnapping/murder of the Pebco 3):

The accused were indicted in the Port Elizabeth High Court as early as 2004. Their case has now been postponed to late June 2009 for the High Court review of the refusal of amnesty in respect of Van Zyl. We assisted Justice in compiling the record of the review, which was lodged with the Pretoria High Court in July 2008. Van Zyl is seriously ill and may not be in a position to be prosecuted. His co-accused has not applied for a review of the refusal of amnesty and could still be prosecuted provided the two State witnesses are available.

5.2 *Anton Lubowski Assassination*

This matter has attracted ongoing negative publicity throughout 2008, due to the fact that the complaint laid in December 2007 has not been investigated. The family have gone to the length of appointing counsel to represent them. I have had a number of communications with him. Although Lubowski was murdered in Namibia, a South African Court would have jurisdiction if he was killed in pursuance of a conspiracy formulated in South Africa. The right to prosecute any such conspiracy will prescribe in September 2009. The D'Oliveira Unit conducted an incomplete enquiry suggesting complicity of the CCB in the assassination. Although it would appear unlikely that evidence would be forthcoming to justify a prosecution, the outstanding issues must be investigated and the family given feedback prior to the prescription of the offence. In this regard, SAPS will be required to investigate.

5.3 *The kidnapping and murder of the Cradock 4*

The victims are applicants in the constitutional challenge and have made a number of public statements concerning the fact that no prosecution has been instituted in this matter. At present, the only available evidence is a statement by De Kock to the effect that Van Zyl, the accused in the Pebco 3 matter, telephonically confessed to him that he was involved in this case and the fact that one of the amnesty applicants made a confession to the family prior to the amnesty hearing. SAPS must investigate these allegations to determine whether either of the two confessions could stand up in court. Another complicating factor is that in the event

of a prosecution being instituted, the accused will apply for their refusal of amnesty to be taken on review.

5.4 The kidnapping and disappearance of *Nokuthula Simelane*

The victims are also applicants in the constitutional challenge and have also appointed counsel to advance their case. Their counsel did call for a prosecution on a charge of kidnapping against a low ranking member of the Security Forces. Adv Mpshe has however authorised that a formal inquest be held so as to get the full picture of the person's disappearance and most likely, murder. SAPS must appoint an investigating officer to locate the witnesses who must testify at the inquest. No arrangements have been made to date for the holding of the inquest.

5.5 The *Heidelberg Tavern and St James Church Massacres*

The father of one of the deceased and a parliamentarian representing other victims have called for the prosecution of the current leader of the PAC. He has not applied for amnesty, but has made a number of public statements to the effect that he ordered the two attacks. We have located the existing Court records relating to the matters, but SAPS will have to conduct a series of investigations.

5.6 Warrant of arrest: *Philip Powell*

In 2008, Powell made representations via a local attorney for the cancellation of a warrant of arrest issued in respect of a possession of arms case going back to 1994. We compiled a memo for the Acting NDPP advising him to take this matter up with the Acting National Commissioner and Acting DG of NIA. We are not aware of what has transpired further in this matter. The background to this matter is the allegation that a large quantity of armaments, removed to KwaZulu-Natal, have not been recovered. In the light of the 2009 general elections, this must clearly raise an issue of national security and it is essential that this matter be dealt with prior to the elections.

5.7 The *Samora Machel* air crash

This matter has to date not been dealt with as a TRC matter, despite the fact that the TRC held a special hearing into the case and no one applied for amnesty. The former Minister for Safety & Security made a statement that SAPS was conducting a full investigation into the matter. The matter periodically surfaces in the media and also affects our country's relationship with Mozambique. Consideration should be given to whether this matter should not be incorporated into the TRC investigations.

5.8 The murder of *Rick Turner*

This also has not been dealt with as a TRC matter. Dr Pretorius however received information regarding the possible whereabouts of the firearm used to assassinate Turner and his daughter has filed a request for access to information. It must also in respect of this matter be decided whether it should form part of the TRC cases.

5.9 The compilation of a data base of TRC material

This matter was not taken forward, because NIA required a hard copy inventory to be compiled prior to scanning onto an electronic data base. Subsequently, the Document Centre has substantially systematically written up the files and consequently, this matter can again be taken forward with NIA.

6. As can be seen from the above breakdown, the majority of matters can only be taken forward with the assistance of SAPS and NIA. There has been general public criticism of the fact that no progress has been made on the cases, aggravated by the fact that victims have in certain cases appointed lawyers and consequently, the prospect of litigation is real. In certain of the matters, there is also the risk of the offences prescribing before they can be decided on, which would also place the NPA in a very bad light. The fact that elections will take place in 2009, most likely in mid-April, must also be taken into consideration, because in the past, the TRC cases have featured prominently on the election agendas of the various political parties.

7. My recommendation is that, as a matter of urgency in 2009, when the parties are available, a meeting should be set up with the Acting NDPP, yourself and myself to obtain his approval on the way forward. As soon as the meeting with the Acting NDPP has taken place, efforts should be made to reconvene the Task Team so that work can commence.

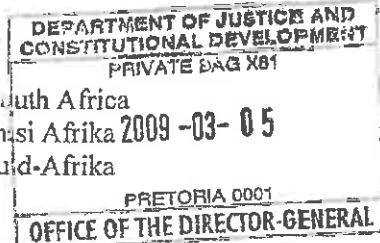
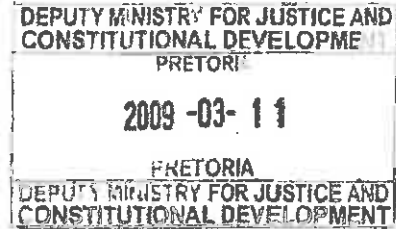
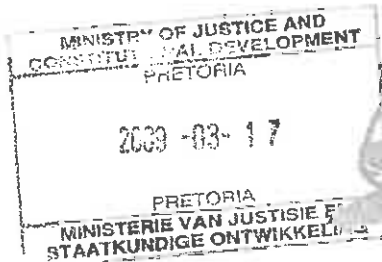
Kind regards

Chris Macadam

2009/07/23

MSM 43

3/16/2



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

MEMORANDUM

TO: MR ME SURTY, MP
MINISTER OF JUSTICE & CONSTITUTIONAL
DEVELOPMENT

FROM: ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: TRC TASK TEAM

DATE: 17 FEBRUARY 2009

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to inform the Minister of my intention to reconvene the TRC Task Team and to advise him of matters relating thereto.

2. BACKGROUND

2.1 The TRC Guidelines provide for the creation of a Task Team made up of representatives from SAPS, NIA and DoJ&CD to, within the scope of their mandates, assist the members of my office to evaluate the TRC material. In terms of the Guidelines, the duty to decide whether or not to prosecute lies with me.

2.2 Since 2007, the Task Team has not sat, due to the fact that matters relating to it were tabled before the Ginwala Commission. The effect thereof was that investigations into TRC matters could not continue.

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- 2.3 The victims were dissatisfied with the lack of progress being made in their matters and in certain cases, appointed lawyers who declared the intention to institute legal proceedings against the NPA. Certain interventions from my office were necessary in urgent matters.
- 2.4 The Ginwala Commission did not make any findings which impact on the functioning of the Task Team and consequently, I have deemed it imperative to reconvene the Task Team so that work on the TRC cases can commence.

3. BRIEFING


- 3.1 Members of my office have met with the Divisional Commissioner of the Detective Service of SAPS and the Deputy Director General: Operational Support of NIA. Both agencies have indicated their willingness to again participate in the Task Team and to perform duties within their agencies' mandates.
- 3.2 After I have received feedback from you, I intend submitting written invitations to the relevant Directors General, inviting them to nominate staff members to form part of the Task Team and to arrange a date for the first meeting of the Task Team.
- 3.3 No requests to investigate TRC matters have been received since November 2007 and it is anticipated that once the matters on hand have been dealt with, that the chapter on these cases may be closed. In its report released in 1998, the TRC did in fact recommend that a time limit should be imposed on such prosecutions.
- 3.4 The following matters are on hand at present:

3.4.1 ***S v Van Zyl & Ano***

The accused were indicted in the Port Elizabeth High Court as early as 2004. Their case has now been postponed to late June 2009 for the High Court review of the refusal of amnesty in respect of Van Zyl.

3.4.2 ***Anton Lubowski Assassination***

Although the deceased was murdered in Namibia, the family have requested the NPA to investigate the possibility of the murder being committed in pursuance of a conspiracy formulated in South Africa. Because the enquiry is limited to



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a conspiracy charge, this offence will prescribe in September 2009.

3.4.3 **The kidnapping and murder of the *Cradock 4***

The victims are co-applicants in the application to have the TRC Guidelines declared unconstitutional. The case was the subject of an inquest presided over by the Judge President of the Eastern Cape Division of the High Court and amnesty was refused in respect of the Security Branch members who came forward, admitting complicity in the murder.

3.4.4 **The kidnapping and disappearance of *Nokuthula Simelane***

The victim disappeared in 1983 and no evidence has come forward regarding her suspected murder, nor have her remains been recovered. Some information relating to her kidnapping and torture was obtained by the TRC. I have decided in this matter that it would be most appropriate to hold a formal inquest.

3.4.5 **The *Heidelberg Tavern and St James Church Massacres***

The current Head of the PAC has claimed responsibility for ordering these attacks. He has never applied for amnesty and victims have called for his prosecution.

3.4.6 **Warrant of arrest: *Philip Powell***

This relates to a receipt of a substantial quantity of armaments by Philip Powell from former Vlakplaas Commander de Kock. Powell has made representations that a warrant for his arrest be cancelled. The TRC granted amnesty to De Kock and others in connection with the matter and made findings against Powell.

3.4.7 **The *Samora Machel* air crash**

This matter has to date not been dealt with as a TRC matter, despite the fact that the TRC held a special hearing into the case and no one applied for amnesty. The former Minister for Safety & Security made a statement that SAPS was conducting a full investigation into the matter. The matter periodically surfaces in the media and also affects our country's relationship with Mozambique. In order to enable

this matter to be effectively investigated, I have decided that this matter must now be dealt with by the Task Team.

3.4.8 The murder of Rick Turner

Information has been received regarding the firearm which was used in the killing. This information must be followed up by SAPS.

3.4.9 Allegations against Security Branch member, General Basie Smit

When Vlok and others pleaded guilty to the poisoning of Rev Chikane, they implicated General Smit as being involved in the plot. He never applied for amnesty and was not prepared to plead guilty. A case against him based on these allegations has been investigated.

- 4. All of the above matters, except for the Pebco 3 case, require investigations by SAPS before I can make a decision whether are sufficient grounds to institute prosecutions or not.
- 5. Although the Pretoria High Court has declared the Guidelines unconstitutional and an appeal has been noted, there is no reason why the investigations cannot proceed in the interim.
- 6. Given the unique circumstances surrounding TRC cases, NIA has been requested to compile a threat analysis of the risks attached to such investigations. I will forward the analysis to you upon receipt thereof so that you can brief the affected Ministries.
- 7. I will furnish you with a further report after the first meeting of the Task Team.

[Handwritten signature]

ADV MJ NPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 03.03.09.

NOTED

[Handwritten signature]

ADV M SIMELANE
DG: DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT
DATE:

It may be useful that the Minister first discuss these matters with the JMC Ministers so that the acting NDPP can be advised how to proceed especially on what the mandate of the NPA is on these matters if at all.

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I can't find fault with the approach proposed. In fact, in law, NOPP must proceed with prosecutions or not (if requested). To ensure this does not take place in isolation, the Task Team was established, as part of remedial policy. As this is a sensitive matter, I agree with recent

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 ADV J DE LANGE
 DEPUTY MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT
 DATE:

consultations
 with NEC +
 Resident

✓
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Support Aulis view

~~_____~~
 MR ME SURTY, MP
 MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
 DATE: 2009-07-29

investigations must proceed!

However, matters can be raised in IMC meeting.

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

MEMORANDUM

TO: MR JT RADEBE, MP
MINISTER OF JUSTICE & CONSTITUTIONAL
DEVELOPMENT

FROM: ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT: *THE STATE v VAN ZYL & KOOLE* (PEBCO 3)

DATE: 28 MAY 2009

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to inform the Minister of matters arising from my meeting on 27 May 2009 with the families of the Pebco 3 and Mtimkhulu/Madaka cases.

2. BACKGROUND

2.1 In my report in terms of Section 33(2)(b) of the National Prosecuting Authority Act, No 32 of 1999, as amended, dated 14 May 2009, I informed the Minister of my decision to temporarily withdraw the charges against two former Security Branch members, charged with the Pebco 3 incident.

2.2 Given the serious nature of the matter and the distress which the withdrawal would cause the families, I and senior members of my staff decided to meet with them to personally explain in full all the reasons for the withdrawal.

2.3 Due to the fact that there were certain evidential connections between the Pebco 3 matter and the Mtimkhulu/Madaka matter, which had taken place five years earlier, I decided to meet with these families as well.

3. FEEDBACK FROM THE MEETING

3.1 In the case of the Mtimkhulu/Madaka matter, all the perpetrators who had been involved in the kidnapping and murders, had been granted amnesty and consequently, I explained to the families that the State could in law not contemplate instituting criminal proceedings. The families raised the issue of an outstanding civil claim, which they had instituted against the Minister of Safety & Security, arising from the incident. I explained to them that one of the consequences of amnesty was that the organization, to which the successful amnesty applicant belonged, automatically received amnesty for civil liability. In this regard, I indicated that most likely, the claim fell away once the applicants were granted amnesty. I however indicated that were the families to supply me with the relevant documentation, my office would take the issue up with the State Attorney in order to confirm what transpired with the matter.

3.2 In respect of the Pebco 3 matter:

3.2.1 I explained that the prosecution could not proceed until the review of the amnesty process had been finalised. I informed them that this matter was being attended to by the DoJ&CD and that currently, the affidavits from the Respondents justifying the refusal of amnesty had yet to be compiled and filed. The families expressed their concern at the fact that the review had been outstanding since 2004 and requested that I appeal to the Minister for his intervention in the matter. I certainly agree with the families that the finalisation of the review process should be given a high priority by the DoJ&CD, but I did point out to them that the Minister has no powers to intervene directly in the process. My office has offered to assist the DoJ&CD as far as finalising the outstanding matters is concerned.

3.2.2 I further explained that independently of the review process, there was an evidential difficulty relating to the availability and reliability of the witnesses who had implicated the two accused. In this regard, I informed the families that were the State to proceed at this stage, the accused would be acquitted. I indicated that it would be necessary for SAPS to reinvestigate the matter in order to establish whether in fact any reliable evidence is available. This process should take

place pending the review so that in the event of the review application being unsuccessful, immediate consideration could be given to implementing the prosecution.

3.2.3 The families also raised the issue of a civil action against the Minister of Safety & Security, because the perpetrators were all former Security Branch members operating in terms of their then scope of duties. I advised them that in the event of the review being dealt with in favour of the applicants, they would be estopped from proceeding with any civil action and recommended that they should await the conclusion of a review process before considering any civil action. They were also informed that any evidence obtained independently of the TRC process could be used in a civil claim.

3.3 Although the families expressed their concerns over the delays, they nevertheless were grateful for being taken into confidence and confirmed that they now fully understood the situation. Due to the fact that they had complained of being approached by individual members of the media, I arranged for my media spokesperson to convene a conference with the media so that the families could at that point express their views and avoid further harassment.

3.4 In respect of both cases, the remains of the deceased were never recovered. During the amnesty process, one of the amnesty applicants, who is now deceased, pointed out the spots where the two separate killings had taken place. The Missing Persons' Task Team followed up this evidence and in fact found charred skeletal remains in the vicinity. Although conclusive DNA tests could not be conducted, it is nevertheless most likely that the skeletal remains are those of the deceased in the two cases. Both family groups raised the issue as to when they would receive the remains for burial purposes. They were informed that the Missing Persons' Task Team had concluded its investigations and that the DoJ&CD TRC Unit was now responsible for arranging the handover and would communicate directly with them. It is important to note that because the discovery of the remains derived directly from the amnesty process, this evidence cannot form part of the criminal investigation in the Pebco 3 matter.

4. OTHER MATTERS ARISING

4.1 The problems surrounding the Pebco 3 matter and the justifiable dissatisfaction of the families serve to highlight a general problem with all TRC-related matters, namely that since the closure of the TRC, these have never been properly investigated.

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

STATEMENT: APPLICATION TO CROSS-EXAMINE ADV MOKOTEDI MPSHE

I, the undersigned.

JOSEF ARNDT VENTER

do hereby make oath and state that:

1. I am an adult male attorney practising as a Senior Associate at Webber Wentzel at Convention Towers, Cape Town. I am the attorney of record for the families and survivors of apartheid-era crimes (known as the "**Calata Group**") as well as Adv Anton Ackermann SC.
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, and also Mr Anton Rossouw Ackermann ("**Mr 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 Advocate Mokotedi Mpshe SC ("**Mr Mpshe**" or "**Mpshe**"). Mr Mpshe has been scheduled to appear before the Commission for cross-examination on 7 May 2026.

THE APPLICATION

5. Mr Mpshe has filed a statement with the Commission. The statement is unsigned but dated 18 March 2026. He testified before the Commission on 7 April 2026.
6. Our clients wish to put questions to Mr Mpshe in relation to the following aspects arising from his statement and testimony.

M. Q. J.

The decision to relieve Ackermann from his duties in relation to TRC cases

7. In paragraphs 28 to 30 of his statement, Mr Mpshe provides an extensive narrative regarding the motivation behind his decision to relieve Ackermann SC of his operational functions and responsibilities in relation to TRC cases. Mpshe states that:
- 7.1 Soon after his appointment as Acting NDPP on 26 September 2007, he “held briefings with various stakeholders, including those that were responsible for TRC matters”; during these “engagements”, it became apparent to him that there was “much acrimony” directed towards Ackermann (which Mpshe describes as “personality issues”) and Ackermann’s “management of TRC matters” (Mpshe statement at para 29);
- 7.2 During November 2007, he received information about a complaint that Reverend Frank Chikane lodged with then Minister of Justice, Bridgitte Mabandla, about Ackermann’s handling of the prosecution in the Chikane matter (MJM1 to Mpshe’s statement); he became concerned that the operational management of TRC matters by Ackermann became “untenable” because of “tensions” between Ackermann and the “stakeholders” (Mpshe statement at para 29);
- 7.3 He “fully supported” Ackermann in his response to Chikane’s complaints (Mpshe statement at para 30); but decided, “a result of” the Chikane complaint, to relieve Ackermann of his duties because the “perception of him by stakeholders and the acrimony directed against him remained” (Mpshe statement at para 29).
8. Our clients wish to establish from Mpshe:
- 8.1 who the “stakeholders” were with whom he engaged regarding the TRC cases,
- 8.2 why they had “much acrimony” towards Ackermann,
- 8.3 what the “tensions” were between the “stakeholders” and Ackermann, and
- 8.4 whether the “stakeholders” exerted pressure or influenced Mpshe to relieve Ackermann of his duties considering that the Directors-General in the Justice



Cluster through the DG of Justice, Menzi Simelane, previously requested NDPP Pikoli to remove Ackermann from the TRC cases (Menzi Simelane statement at para 30).

9. Our clients also wish to question Mpshe about his decision to relieve Ackermann of his duties in circumstances where he (Mpshe) fully supported Ackermann. It seems illogical to our clients that Ackermann should have been relieved of his duties to prosecute serious crimes if he had the backing of the Acting NDPP.
10. It will be put to Mpshe that his decision to relieve Ackermann was also illogical in the light of the following statement that is contained in his letter to Minister Mabandla (MJM2 at page 2):

"Adv Ackermann admits that he had some concerns about the Guidelines and in a number of official memoranda, raised his concerns on the constitutionality thereof. Despite reservations, he diligently applied the criteria as stipulated in the Guidelines. With the wisdom of hindsight, it appears that there was some merit in Adv Ackermann's reservations. Indicative thereof is the institution of a civil action in the High Court, challenging the validity of the TRC Guidelines."

11. Our clients further wish to engage Mpshe regarding his views on the Guidelines (amendments to the prosecution policy), what he understood to be Ackermann's reservations, why he, "with the wisdom of hindsight" saw merit in those reservations, and whether in his view the Guidelines undermined and infringed the independence of the NPA.

12. On page 2 of MPM2 under the heading *Ad par 5*, Mpshe informed Minister Mabandla that:

"The gravamen of Rev Chikane's complaint is his perception of being used as a pawn in a battle between Government and the NPA. No mention is made of any specific Government department."

13. Our clients wish to establish from Mpshe what he understood when he described to the Minister that Chikane perceived himself as "a pawn in a battle between Government and the NPA".
14. Ackermann SC denies that the Mpshe's decision to relieve him from his duties in relation to the TRC cases was motivated by the complaint arising from Ackermann's

M. Q. E

handling of the prosecution in the Chikane matter. We wish to put it to Mpshe that the decision to relieve Ackermann was:

- 14.1 Taken at the behest of the executive, such as the Directors-General in the Justice Cluster.
 - 14.2 Alternatively, or in addition, the decision was informed by the attitudes of Minister Mabandla, Commissioner Selebi, and the Directors-General in the justice cluster towards the PCLU, Pikoli and Ackermann because they were intent on prosecuting TRC cases.
 - 14.3 This is fortified by Mpshe's evidence that the DG of Justice, Menzi Simelane, wanted to know from him why he (Mpshe) was keeping Ackermann in his position (Transcript 26, 7 April 2026, p 55). This question was seemingly asked by Simelane before Mpshe relieved Ackermann of his duties in relation to TRC cases.
15. It will be put to Mpshe that the justice cluster's undermining of NDPP Pikoli, Ackermann and the PCLU resulted in interference that eroded or stopped the investigation and prosecution of TRC cases.
 16. It will be put to Mpshe that his decision to relieve Ackermann of his duties in relation to TRC cases did not improve or advance the state of affairs because no further prosecutions or inquests of TRC cases were instituted after Ackermann was relieved of his duties. Indeed, the first indictment since the Chikane matter was only issued some 9 years later in 2016 and only because the family of Nokuthula Simelane went to court to compel the NPA to make a decision.
 17. In the light of the above, it will be put to Mpshe that his decision to relieve Ackermann of his duties was improper and played a role in the undermining of the prosecution of TRC cases.

M. Q. J.

The management of the TRC cases after Ackermann was relieved

18. Our clients wish to dispute Mpshe's claim that he relieved Ackermann of his duties during 2008 (Transcript 7 April 2026, pp 32 to 33). His claim is contradicted by Ackermann and in his own statement where he says he relieved Ackermann during November 2007 (Mpshe statement at para 30).
19. Our clients also wish to dispute Mpshe's claim that he put Adv Chris Macadam in charge of TRC cases after Ackermann was relieved (Mpshe statement at para 30). This statement contradicts Mpshe's own documentary evidence (MJM2 to Mpshe's statement) and the evidence of Macadam before this Commission that he only became involved a year into Mpshe's tenure as Acting NDPP in September 2008 (Macadam statement at para 53).
20. In the letter that Mpshe wrote to Minister Mabandla on 24 January 2008, he informed the Minister that all future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga and the TRC Task Team" (paragraph 4 of MJM2). Our clients wish to establish from Mpshe how he envisaged the Task Team would manage TRC cases because the amendments to the prosecution policy merely required the Task Team to support the NPA in executing its mandate in relation to TRC cases.
21. In addition, we wish to know what role he envisaged for the Task Team given that it never met again after January 2007 and became effectively defunct.
22. Our clients wish to hear the response of Mpshe to the following evidence of Adv Mtunzi Mhaga. Mpshe (per MJM2) assigned responsibility of the TRC Cases to Adv Mhaga and Ramaite:
 - 22.1 "From late 2007 until approximately June 2009, there was a marked decline in progress on TRC-related matters. As a result, the TRC Task Team became largely dysfunctional, and my role within that structure was effectively rendered redundant." (Mhaga statement at para 77)
 - 22.2 "This was a professionally difficult period, characterised by a lack of prosecutorial work." (Mhaga statement at para 78)



23. Our clients further wish to question Mpshe about SAPS' refusal to participate in the TRC Task Team as expressed in the letter from Acting Police Commissioner TC Williams dated 7 March 2008 (Jacobs bundle p 1808) and the steps he took to resolve the impasse with SAPS.
24. It will be put to Mpshe that SAPS' ongoing denial of effective investigative support severely undermined the pursuit of the TRC cases.

Ackermann's concerns about the lack of progress in TRC cases

25. In paragraph 36 of his statement, Mpshe states that "Mr Ackermann therefore retained his supervisory role over the staff dealing with TRC matters within the PCLU. I had no objections to this arrangement."
 - 25.1 It is inferred that despite being relieved of his duties in relation to TRC cases, Ackermann remained involved in the day-to-day intricacies of the matters.
 - 25.2 Ackermann accepts that after Mpshe relieved him of his duties in relation to the TRC cases, he remained the head of the PCLU and retained overall responsibility of the PCLU.
 - 25.3 However, Ackermann disputes the assertion that he remained involved in the operations or day-to-day intricacies of the cases, and this will be put to Mpshe.
26. Despite being relieved of his duties in relation to TRC cases, Ackermann remained concerned about the non-progression of the cases, particularly the PEBCO 3 matter in which he was previously directly involved; and he decided to act on his own volition because of the inaction (Transcript 24 April 2026, p 83).
 - 26.1 At this time, Macadam was not involved in the TRC cases and Mhaga was on circuit in the Transkei.
 - 26.2 On 5 June 2008 (MJM3A to Mpshe's statement) Ackermann initiated a process to inform Ramaite, who Mpshe appointed to be responsible for the investigation and prosecution of TRC cases, that:

"An additional matter which I wish to bring to your attention is the Pebco 3 matter, where the accused are due to appear on a final remand in the Port Elizabeth High Court on 5 August 2008. The accused had, since 2004, appeared in the High Court on indictment, but on each occasion,

M. Q. N.

the matter has been postponed, due to the fact that the review of their refusal of amnesty by the TRC has not been finalized. The DoJ & CD is responsible for compiling a record and enrolling the review before the TPD. To date, this has not taken place and on each occasion when we take this matter up, we are informed that documents are missing, etc. On more than one occasion, we had been asked to consider withdrawing the criminal case, because of the problems with finalizing the review.

The fact that the matter has not gone to trial is of considerable distress and dissatisfaction with the victims. They have complained to the Minister and have also displayed their dissatisfaction at court on the dates of the postponements. A decision must be taken as to how the next court appearance will be managed. We believe that this should first be discussed between ourselves and the Acting NDPP, whereafter the Task Team must be consulted and thereafter, a memorandum submitted to the Minister.

Our prima facie views are that the Court would not grant another postponement, and, in any event, this would not be acceptable to the victims. The review is only for the benefit of the accused, and one option would be to proceed with the prosecution. We however believe that a judge is highly unlikely to order a trial when the accused has the opportunity of receiving amnesty and is in no way to blame for the failure to have the review process finalized. We would also have to establish whether the matter is in fact at this stage ready for trial, since the witnesses were last consulted almost five years ago. The Court may require or we would be obliged to call someone senior from the DoJ & CD to testify under oath as to the reasons for the delay with the review. We see both the NPA and the DoJ & CD being criticized severely by the victims and the media.”

27. Our client's wish to establish whether Mpshe was aware of the concerns that Ackermann raised with Ramaite in relation to the PEBCO 3 matter, and whether he took any steps, or requested Ramaite to take steps, to address the concerns.
28. Mpshe further annexes MJM3A to MJM3D to his statement to create the impression that there were many instances where Ackermann was involved in the operations of TRC cases. Our clients wish to put the following to Mpshe and solicit his response:
 - 28.1 MJM3A and MJM3D (Internal memorandum from Ackermann to Ramaite dated 5 June 2008) are duplicate documents.
 - 28.2 MJM3B (list of members of the TRC Task Team) and MJM3C (minutes of the TRC Task Team meeting held on 12 October 2006) dated 12 October 2006,



predates Mpshe's decision to relieve Ackermann of his duties in relation to TRC cases.

The PEBCO 3 matter

29. The charges against the PEBCO3 accused were provisionally withdrawn by Mpshe (MJM8 at paragraph 2.1). The charges have never been reinstated.
30. It is the evidence of Ackermann SC that he was informed by Macadam that Mpshe took over the responsibility for the PEBCO3 matter after he (Ackermann) was relieved of his duties (Transcript 4 March 2026, p 76). Our clients wish to establish from Mpshe:
 - 30.1 whether he was personally in possession of the PEBCO 3 docket between 2008 and 2009;
 - 30.2 whether he personally worked on the matter pursuant or after the decision was taken to withdraw the charges; and
 - 30.3 what the reasons were for the decision was taken to withdraw the charges, and if the pending review proceedings informed the decision. (paragraph 3.2.1 of MJM8 to Mpshe's statement)
31. To the extent that the pending review proceedings informed the decision to withdraw the charges, our clients wish to put the concerns that were expressed by Macadam to Ramaite on 9 June 2008 (MJM3E to Mpshe's statement) to Mpshe; and seek his response to the failure to progress the review and the apparent lack of investigators appointed on the matter. In this regard, Macadam informed Mpshe that:

"There is however one matter which requires urgent attention, namely the Pebco 3 prosecution. The accused in this matter appeared on indictment in the Port Elizabeth High Court in 2004. On every occasion that the matter has been in court, it has been postponed so as to enable the review of the refusal of the amnesty to be heard by the full bench of the TPD. Last year, the matter was postponed as a final date to 5 August 2008. The responsibility for arranging the review lies with the DoJ & CD.

To date, no date for the hearing has been fixed, although Adv Ackermann SC and I were given the assurance that this would be either early or mid- 2008. Obviously, the Judge President would not be able to convene a full bench to hear the review between now and 5 August 2008. It would be enormously damaging for the Pebco 3 matter to be struck from the roll due to a failure on

M. Q. 9

the part of a State department. In my view, the only way in which a postponement can be obtained is if a date for the review is set for the third or fourth quarter of this year's court sessions.

Although I intend taking up the matter with Tessie Bezuidenhout as a matter of urgency, I would recommend that you contact the Director General: DoJ & CD and request him also to ensure that the matter is expedited.

Another matter which requires attention is the status of the criminal investigation. As I recall, the matter was brought to court as a DSO investigation, but the investigators have now resigned. Consideration will have to be given to either appointing new investigators or to the matter being referred to SAPS. The reason why this is important is that the State may be required to demonstrate that it is ready to proceed with the prosecution on 5 August 2008.

32. On 28 May 2009, Mpshe informed the Minister of Justice, Jeff Radebe (MJM8 to Mpshe's statement) that:

"there was an evidential difficulty relating to the availability and reliability of the witnesses who had implicated the two accused. In this regard, I informed the families that were the State to proceed at this stage, the accused would be acquitted. I indicated that it would be necessary for SAPS to reinvestigate the matter in order to establish whether in fact any reliable evidence is available."
(paragraph 3.2.2 of MJM8)

33. Our clients wish to question Mpshe about the aforesaid statement to Minister Radebe in the light of the following evidence contained in Mpshe's statement before the Commission:

33.1 Email from Macadam to Ramaite dated 10 December 2008 (MJM6) which states in relation to the PEBCO3 case that "[h]is co-accused has not applied for a review of the refusal of amnesty and could still be prosecuted provided the two State witnesses are available."

33.2 Memorandum from Mpshe to Minister of Justice, Enver Surty, dated 17 February 2009 (MJM7) and titled *TRC Task Team* which states at paragraph 4 that "[a]ll of the above matters, except for the Pebco 3 case, require investigations by SAPS before I can make a decision whether (sic) are sufficient grounds to institute prosecutions or not."

34. In relation to Mpshe's decision to withdraw the charges in the PEBCO 3 matter, our clients wish to question Mpshe about the basis for the decision considering the fact



that the indictments were issued against the accused in February 2004. At that time, the investigation into the PEBCO 3 case would have been complete because the indictments were issued.

TRC Matters while DPP: KwaZulu Natal

35. In his evidence before the Commission, Mpshe claimed that he did not deal with TRC cases in his position as Director of Public Prosecutions in KwaZulu Natal (“DPP KZN”) (Mpshe statement at para 15).
36. On 15 November 2013, Macadam sent a memorandum titled *TRC Matter: Phillip Powell* to Mr Abrahams (then Acting Special Director and Acting Head of the PCLU). A copy of the memorandum is attached as “A1”.
37. At paras 8 to 13 of the memorandum, Mr Macadam records that NDPP Ngcuka directed Mpshe, then DPP KZN, to prosecute Powell. Representations were received and on 12 May 1999 Mpshe wrote to Powell’s advocate stating that he had decided not to prosecute Powell.
38. It will be put to Mr Mpshe that his claim that he did not deal with any TRC matters in his capacity as DPP KZN is not correct. Further questions will be asked to Mpshe in relation to the decision not to prosecute Powell.

The assertion that substantive work was done on TRC cases during 2008

39. In paragraphs 41 and 44 of his statement, Mpshe states the following:

“41. I do not accept that the position can properly be reduced to a simple assertion that “no work” was done or that matters were ‘left unattended.’ The available contemporaneous documentary record reflects internal management and supervision arrangements concerning TRC matters within the PCLU during 2008, including the arrangements recorded in MJM3 annexed above.

44. I dispute that it is factually correct or that it can be assumed that little or no work was carried out by the NPA, SAPS, or DSO on the TRC cases during 2008. I have referred above to internal memoranda from ‘MJM3 to MJM7’ as examples showing that work was being done during 2008 regarding TRC matters.”



40. Macadam reported to Ramaite in an email dated 10 December 2008 (MJM6 to Mpshe's statement) about the status of eight TRC cases that were on the books of the PCLU. In his report to Ramaite (MJM6), Macadam described the following:
- 40.1 In relation to the Lubowski matter: "This matter has attracted ongoing negative publicity throughout 2008, due to the fact that the complaint laid in December 2007 has not been investigated. ... The right to prosecute any such conspiracy will prescribe in September 2009. ... In this regard, SAPS will be required to investigate." (paragraph 5.2)
- 40.2 In relation to the Cradock 4 matter: "The victims are applicants in the constitutional challenge and have made a number of public statements concerning the fact that no prosecution has been instituted in this matter. At present, the only available evidence is a statement by De Kock to the effect that Van Zyl, the accused in the Pebco 3 matter, telephonically confessed to him that he was involved in this case and the fact that one of the amnesty applicants made a confession to the family prior to the amnesty hearing. SAPS must investigate these allegations to determine whether either of the two confessions could stand up in court." (paragraph 5.3)
- 40.3 In relation to the Nokuthula Simelane matter: "[The family's] counsel did call for a prosecution on a charge of kidnapping against a low ranking member of the Security Forces. Adv Mpshe has however authorised that a formal inquest be held so as to get the full picture of the person's disappearance and most likely, murder. SAPS must appoint an investigating officer to locate the witnesses who must testify at the inquest. No arrangements have been made to date for the holding of the inquest." (paragraph 5.4)
- 40.4 In relation to the Helderberg Tavern and St James Church Massacre matter: "He has not applied for amnesty but has made a number of public statements to the effect that he ordered the two attacks. We have located the existing Court records relating to the matters, but SAPS will have to conduct a series of investigations." (paragraph 5.5)
- 40.5 In relation to the Phillip Powell matter: "We compiled a memo for the Acting NDPP advising him to take this matter up with the Acting National



Commissioner and Acting DG of NIA. We are not aware of what has transpired further in this matter." (paragraph 5.6)

- 40.6 In relation to the Samora Machel matter: "The former Minister for Safety & Security made a statement that SAPS was conducting a full investigation into the matter. The matter periodically surfaces in the media and also affects our country's relationship with Mozambique. Consideration should be given to whether this matter should not be incorporated into the TRC investigations." (paragraph 5.7)
- 40.7 In relation to the Rick Turner matter: "This also has not been dealt with as a TRC matter. Dr Pretorius however received information regarding the possible whereabouts of the firearm used to assassinate Turner and his daughter has filed a request for access to information. It must also in respect of this matter be decided whether it should form part of the TRC cases." (paragraph 5.8)

41. Macadam concluded the report with the following remarks:

"As can be seen from the above breakdown, the majority of matters can only be taken forward with the assistance of SAPS and NIA. There has been general public criticism of the fact that no progress has been made on the cases, aggravated by the fact that victims have in certain cases appointed lawyers and consequently, the prospect of litigation is real. In certain of the matters, there is also the risk of the offences prescribing before they can be decided on, which would also place the NPA in a very bad light. The fact that elections will take place in 2009, most likely in mid-April, must also be taken into consideration, because in the past, the TRC cases have featured prominently on the election agendas of the various political parties."

"My recommendation is that, as a matter of urgency in 2009, when the parties are available, a meeting should be set up with the Acting NDPP, yourself and myself to obtain his approval on the way forward. As soon as the meeting with the Acting NDPP has taken place, efforts should be made to reconvene the Task Team so that work can commence."

42. It is to be noted that in May 2003, Macadam conducted an audit of TRC cases and identified 39 cases for prosecution, possible prosecution and further investigation (Macadam bundle p 1457).
43. Our clients wish to put it to Mpshe that a proper reading of the annexures relied on, particularly MJM6, does not support his denials in paragraphs 41 and 44 of his statement and makes plain that no substantive work was done during 2008. To the

M.A. Z

extent that minimal work might have been done, the descriptions provided by Macadam demonstrates that substantive investigative work was not done by the DSO or SAPS during this period.

44. Our clients wish to question Mpshe about his statement that “work was being done during 2008 regarding TRC matters” in the context of the following:

44.1 The NPA's annual report for 2007/2008 (attached as “B1”) which simply stated at page 29 the following in respect of TRC cases:

“S v Van der Merwe & Others

In August 2007, the former Minister of Law and Order, Adrian Vlok, former Head of the South African Police, Johan van der Merwe, and three other former Security Branch members pleaded guilty on a charge of attempting to poison Reverend Frank Chikane, the Director-General in the Presidency. This is the first case where an Executive of the Apartheid Regime admitted to complicity in the commission of human rights abuse directed against the Liberation Movement.”

“Other Matters

Requests to look into other matters have been received and these must be processed according to the TRC Guidelines.”

44.2 The NPA's annual report for 2008/2009 (attached as “B2”) which, at page 23, simply records the following in respect of TRC cases:

“The TRC Guidelines were declared unconstitutional and invalid by the North Gauteng Provincial Division of the High Court. A decision to appeal the judgment will be made early in 2009. A further delay in the prosecution of cases emanating from the TRC process is therefore inevitable.”

45. It will be put to Mpshe that, contrary to his evidence, the NPA's annual reports of 2007/2008 and 2008/2009 disclose that substantive work on TRC cases was not done during these periods.

Other questions that arise from Mpshe's statement

46. Our clients wish to question Mpshe about the following aspects of his memorandum to Minister Surty dated 17 February 2009 (MJM7):

46.1 The statement by Mpshe “that the TRC Task Team has not sat since 2007 due to due to the fact that matters relating to it were tabled before the Ginwala

Commission. The effect thereof was that investigations into TRC matters could not continue"; (at para 2.2)

- 46.2 The statement by Mpshe about alleged interventions that his offices made because "victims were dissatisfied with the lack of progress being made in their matters and in certain cases, appointed lawyers who declared the intention to institute legal proceedings against the NPA"; (at para 2.3)
- 46.3 The statement by Mpshe that "*No requests to investigate TRC matters have been received since November 2007 and it is anticipated that once the matters on hand have been dealt with, that the chapter on these cases may be closed. In its report released in 1998, the TRC did in fact recommend that a time limit should be imposed on such prosecutions.*" This statement is particularly astonishing to our clients considering that there were a few hundred TRC cases sitting with the NPA and less than a handful had been resolved by the time that the statement was made to Minister Surty; (at para 3.3)
- 46.4 The statement by Mpshe about the threat analysis that was conducted by NIA to determine the risks attached to the investigation of TRC cases; (at para 6) ; and
- 46.5 The handwritten comment at the bottom of page 4 of the memorandum which states that "*It may be ... that the Minister first discuss these matters with the IMC ministers so that the acting NDPP can be advised how to proceed especially on what the mandate of the NPA is on these matters if at all.*"
- 46.6 Our clients wish to put it to Mpshe that the handwritten comment clearly illustrates the averment in paragraph 39 of Mpshe statement that "*constraints regarding the availability of investigators because the SAPS management and the NPA differed in the interpretation of each other's roles in the implementation of the NPA Policy and Guidelines*". It will be put to Mpshe that claim that this did not amount to interference is illogical.
- 46.7 It will be put to Mpshe that only inference that can be drawn from the part of the handwritten comment that questions the mandate of the NPA in respect of TRC cases is that the independence of the NPA to prosecute these serious crimes was undermined.

M.D. *J*

47. Our clients wish to question Mpshe about the following statement in his memorandum to Minister Radebe dated 28 May 2009 (MJM8):

“The problems surrounding the Pebco 3 matter and the justifiable dissatisfaction of the families serve to highlight a general problem with all TRC-related matters, namely that since the closure of the TRC, these have never been properly investigated.”

48. Our clients wish to enquire from Mpshe why by the end of May 2009 the TRC cases were never properly investigated.

CONCLUSION

49. The issues outlined above lie at the heart of the Commission's terms of reference and must be contested through cross-examination.

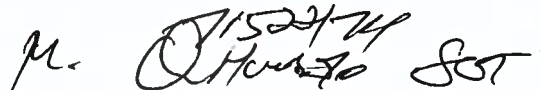
50. It is in the best interests of the work of the Commission that the Calata Group's Counsel be permitted to cross-examine Mr Mpshe.

51. In the light of the above, I humbly request the Chairperson to permit the Calata Group's counsel to cross-examine Mr Mpshe when he next appears before the Commission.



JOSEF ARNDT VENTER

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 _____ on _____ 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

Full Names:
Business Address:
Designation:

SUID-AFRIKAANSE POLISDIENERS
COMMUNITY SERVICE CENTRE WOODSTOCK
04 MAY 2026
WOODSTOCK
SOUTH AFRICAN POLICE SERVICE



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

INTERNAL MEMORANDUM

P. O. Box 752,
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VGM Building
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 Pretoria
 South Africa

Tel: (012) 845 6000

TO: ADV SK ABRAHAMS
 ACTING SPECIAL DIRECTOR AND ACTING HEAD:
 PCLU

FROM: ADV RC MACADAM
 SENIOR DEPUTY DIRECTOR OF PUBLIC
 PROSECUTIONS

SUBJECT: TRC MATTER: PHILIP POWELL
 MATHUBATHUBA CAS 141/04/1994 AND PRETORIA
 CENTRAL CAS 20/08/1994

DATE: 15 NOVEMBER 2013

Dear Shaun

1. Pretoria Central CAS 20/08/1994 was registered on the basis of evidence that former Vlakplaas Commander de Kock had stolen six truckloads of armaments from Mechem in Midrand in October 1993.
2. Mathubathuba CAS 141/04/1994 was registered as a result of a recovery of grenades and rifles in Mlaba Camp in April 1994 immediately prior to the general election.
3. In April 1994, Philip Powell was an IFP Senator, as well as an employee of the Chief Minister of KwaZulu.
4. SAPS raided the Mlaba Camp as a result of information that the IFP was conducting illegal para-military training. Powell was stopped as he was about to leave the camp in his vehicle. He was in possession of a set of keys to a rondavel, which contained hand grenades and a substantial quantity of rifles and other weapons,
5. He made a statement to the police to the effect that Mlaba Camp was a KwaZulu Police training facility and that all the

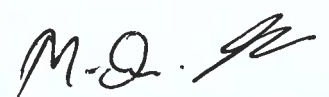
M. O. [Signature]

weapons in the camp were the responsibility of the KwaZulu Police. He alleged that he had paid a temporary visit to the camp and had been given the keys to the rondavel by a member of the police.

6. On 5 July 1994, Adv de Klerk, a Deputy in the Attorney General's Office, declined to prosecute. (A copy of his decision is attached hereto as **Annexure "A"**).
7. De Kock was prosecuted for the removal of the armaments from Mechem and when he was convicted on this charge, testified in mitigation of sentence that the armaments had been given to Powell so as to enable the IFP to defend itself against the ANC.
8. Mr Ngcuka, the then NDPP, directed that Adv Mpshe SC, the DPP: KZN prosecute Powell on the basis of De Kock's evidence.
9. An attempt to arrest Powell on these charges failed when it was established that in January 2005 the President had issued a proclamation, conferring blanket amnesty for all transgressions of the firearms and explosives laws committed on or before 5 December 1993. The transfer of armaments by De Kock to Powell fell squarely within the ambit of the proclamation.
10. Notwithstanding this legal impediment to a prosecution, on 4 May 1999, Adv Nel, a Deputy on Adv Mpshe SC's staff, wrote to the investigating officer, confirming that he was prepared to grant Powell immunity from prosecution, provided that he cause the whole consignment of weapons received from De Kock to be recovered. (A copy of his letter is attached as **Annexure "B"**.)
11. Powell in response to the offer of immunity led the police to a bunker in Nqutu, where six tons of armaments were recovered.
12. On 12 May 1999, Adv Mpshe SC informed Powell's advocate that he had decided not to prosecute Powell. (A copy of the letter is attached as **Annexure "C"**.)
13. There was a public outcry with the decision not to prosecute and Mr Ngcuka instructed that the matter be reinvestigated, which investigation was conducted by the Firearm Unit of SAPS.
14. The investigation revealed that not all the armaments removed from Mechem had been recovered and the National Head of the Bomb Squad submitted an affidavit, alleging that Powell had informed him that he knew of the whereabouts of a further three bunkers.
15. The Mathubahtuba docket was reopened as a result of the above investigation and an affidavit was obtained from the former Commissioner of the KwaZulu Police to the effect that, against his wishes, the Chief Minister had placed Powell in charge of the camp and that he had no operational control over the activities in the facility. Additional evidence was obtained to the effect that the training was provided to members of the IFP Youth League, who were bussed in from all parts of KwaZulu-Natal. Finally, it was established that the hand grenades found in the rondavel had been part of the consignment given by De Kock to Powell.

M. Q. -

16. The reinvestigated docket was submitted to Adv de Klerk, who had been transferred to the DPP: Eastern Cape. He indicated that in the light of the new evidence, he would have rejected Powell's version and instituted a prosecution.
17. Mr Ngcuka wrote to Powell's attorney, informing him of his intention to set aside Adv de Klerk's decision not to prosecute and to in fact prosecute Powell for the hand grenades found in the rondavel at Mlaba Camp.
18. Powell did not submit representations and consequently a warrant of arrest was issued by a Magistrate. Powell however left the country in March 2000 prior to the warrant being executed.
19. It was established that Powell had taken up permanent residence in the United Kingdom. Dr D'Oliveira, the DNDPP responsible for extraditions, looked into the issues of extradition and concluded that the UK authorities would classify the offence as a political one and refuse to extradite him. It is a fact that a number of persons, who were implicated in TRC-related offences, fled to the UK and in those cases the UK Government declined to extradite because of the political nature of the offences. No extradition application was therefore lodged.
20. The offence fell within the mandate of the TRC, because De Kock received amnesty for the offence and the TRC held a special hearing, dealing with Mlaba Camp.
21. The PCLU became seized with the matter as a result of an allegation by Crime Intelligence that Powell had covertly returned to the country and was involved in clandestinely training the IFP Youth to disrupt the forthcoming general election. These allegations proved to be untrue, but Powell's attorney submitted written representations requesting that the warrant of arrest be cancelled due to his client's desire to use OR Tambo Airport as a transit facility for travels between the UK and East Africa.
22. In order to respond to the representations, it was necessary for SAPS to confirm the availability of the witnesses, who refuted Powell's version relating to the hand grenades. This was no easy process, as the witnesses were all former members of the KwaZulu Police, who had either retired or been integrated into SAPS. In addition, other witnesses had been part of the Apartheid Regime's military structures and had ceased to hold public office after 1994.
23. A further obstacle was the undertaking given by Adv Nel on 4 May 1999. He clearly indicated in his letter that the proposed indemnity related to the weapons delivered by De Kock to Powell. Although at the time of making the offer he was unaware of the Mathubathuba docket, it is a fact that those grenades were part of the De Kock consignment. I specifically consulted with Adv Nel on this issue and he advised me that his indemnity would therefore have applied to the Mathubathuba docket.
24. Powell's attorney advised me that he was in possession of documentation, authored by Mr Ngcuka, which would confirm that Mr Ngcuka had supported Adv Nel's offer of indemnity. I was advised that should his client be prosecuted, he would bring an



application for a stay of prosecution.

25. Coincidentally another matter involving extradition from the UK was referred to the PCLU. I had an occasion to consult with the Legal Advisor of the UK Home Office, who also informed me that Powell's case would be regarded as a political offence and extradition would not be approved.
26. On 11 November 2013, I received a letter from the Commander of the CATS Component of the DPCI, giving a variety of reasons as to why the warrant of arrest should be withdrawn. (A copy of the letter is attached as **Annexure "D"**.)
27. It has now been established that although the warrant has not been cancelled, it is no longer active on the SAPS Red Notice System nor has Interpol issued a Red Notice. The movement control records established that Powell has not returned to South Africa since his departure in March 2000.
28. In terms of section 18 of the CPA, the offence prescribes in April 2014. It is inherently unlikely that Powell would return to the country between now and April 2014. It has twice been separately established that the UK authorities will not grant extradition. In my view, the further issue relevant to extradition is the issue of prescription. It is trite that a country will not extradite a suspect if the offence has prescribed according to the Requested State's laws. In extradition matters prescription runs from the time of the commission of the offence and not the time of the lodging of the extradition application. Having regard to Archibold: Criminal Pleading, Evidence and Practice, it would appear that unlike South Africa, different time frames for prescription apply for individual offences and it is not improbable that the offence would have prescribed in terms of UK law. (Due to all the other considerations it is not necessary to inquire further into this specific matter.)
29. It would be a prerequisite for both a prosecution in South Africa and extradition that the necessary evidence to justify the conviction of the accused be still available. In this regard, the DPCI has advised that certain of the witnesses are deceased or their current whereabouts are unknown. In my view, there is also a concern relating to the ability of the available witnesses to accurately recall the events in question, e.g. the former Commissioner of the KwaZulu Police had attached a lever arch thick file of correspondence, dealing with the communications between his office and that of the Chief Minister in order to establish that Powell was in charge of the camp. The contents of this file would be hearsay unless the authors of the letters could testify and confirm their authenticity. In my view, if Powell were to return before April 2014, it would be impossible to establish that a successful prosecution could be instituted.
30. Due to the fact that his attorney had made representations regarding the cancellation of the warrant, the principles of administrative justice require that he have a response and that the matter not simply be left to prescribe.
31. Due to the fact that the crime was committed in KwaZulu-Natal and that three key decisions were taken by senior members of that province's Prosecuting Authority, I believe that the views of the DPP: KZN should be obtained before making a decision on the matter.



32. Due to the fact that the matter falls within the TRC mandate, I would have to advise the NDPP, who would have to concur with the decision and thereafter inform the Minister accordingly.

Kind regards

ADV RC MACADAM

COMMENTS

ADV SK ABRAHAMS
DATE:

Handwritten signature



The Director of Public Prosecutions

KwaZulu : Natal

Private Bag X9008 Pietermaritzburg 3200

Telephone : 0331-452361 E-Mail: dpp@webmail.co.za Fax : 0331-948884

Reference : 1/4/3/5-26/99

Enquiries : Mr Nel/fb

4 May 1999

Superintendent Wensel Diedericks
Special Investigation Team
Director of Public Prosecutions : Transvaal
Maizeboard Building :Second Floor
503 Belvedere Street
ARCADIA
PRETORIA
0001

THE STATE versus PHILLIP POWELL : PRETORIA CENTRAL CAS 20/8/94

1. I refer to our discussion on 3 May 1999 concerning the investigation of the abovementioned matter.
2. I confirm that the investigation relates to six truck loads of firearms, ammunition and explosives which were delivered by Eugene De Kok to Phillip Powell during October 1993. De Kok was subsequently convicted of various contraventions of the Arms and Ammunition Act, No. 75 of 1969 and of the Explosives Act, No. 26 of 1956, (Counts 101 to 106).
3. I further confirm that there is a real possibility that the whole consignment of firearms, ammunition and explosives can be recovered subject to an assurance that the accused will not be prosecuted.
4. I grant the accused indemnity against prosecution on the following conditions :

M. D. J.

Page Two

- 4.1 The indemnity relates only to the firearms, ammunition and explosives referred to above in paragraph 2.
 - 4.2 The accused must cause the whole consignment to be recovered.
 - 4.3 Should the whereabouts of certain articles be concealed the indemnity will fall away.
5. The recovery of the consignment must be expedited as I cannot allow the negotiations to become protracted. You must report progress to me on or before 12 May 1999.
 6. This minute has the approval of the Director of Public Prosecutions.

G. NEL *DN* ^{4/5/99}
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

m. d. g.

KANTOOR VAN DIE
PROKUREUR-GENERAAL



OFFICE OF THE
ATTORNEY-GENERAL

Bb.

REPUBLIEK VAN SUID-AFRIKA • REPUBLIC OF SOUTH AFRICA

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Die Bevelvoerder
Onlus-en Geweldsondersoekteenheid
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PIETERMARITZBURG
3200

Privaatsak X9008
PIETERMARITZBURG
3200

5 Julie 1994

Navrae : Mnr De Klerk

DOSSIER MTUBATUBA MR 141/4/94 : ONWETTIGE BESIT VAN HANDGRANATE EN
VUURWAPEN - VERDAGTE P. POWELL

Die Prokureur-generaal weier om 'n vervolging in hierdie
aangeleentheid in te stel.


PROKUREUR-GENERAAL : NATAL

/fb





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Fax : 0331-948884

Reference : 1/4/3/5-26/99

Enquiries : Mr Nel/fb

12 May 1999

CONFIDENTIAL

Adv. S. Matthews
Advocates' Chambers
NBS Building
145 Commercial Road
PIETERMARITZBURG
3201

**THE STATE vs PHILLIP POWELL : PRETORIA CENTRAL
CAS 20/8/94**

1. I refer to the discussions on 12 May 1999 between Messrs Mpshe, Nel, Matthews and Powell.
2. I decline to prosecute Phillip Powell.
3. I regard the matter as finalised.

DIRECTOR OF PUBLIC PROSECUTIONS

On 12/5/99
I, Petrus Karel Coetzee,
do hereby confirm that I
have had sight of this minute.
I hereby give my undertaking
not to disclose the contents
of this letter, until so
advised by Mr Nel.

[Signature] 12/5/99

[Signature]

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 PRETORIA 0001

Verwysing	Mathubathuba
Reference	CAS 141/04/1994
Navrae	
Enquiries	Lt Col EB Dewey
Telefoon	
Telephone	082 770 5188
Faksnommer	(012) 401 3235
Fax number	

CRIMES AGAINST THE STATE
 ORGANISED CRIME
 DIRECTORATE FOR PRIORITY
 CRIME INVESTIGATION
 PRETORIA
 0001

11 November 2013

The Head
 Priority Crime Litigation Unit
 National Prosecuting Authority
 SILVERTON

Attention: Advocate Chris Macadam

RE: OUTSTANDING WARRANT OF ARREST; PHILIP POWELL:
 MATHUBATHUBA CAS 141/04/1994 AND PRETORIA CENTRAL CAS 20/08/1994

1. A warrant of arrest (J50) was issued for the subjects arrest by the Mahlabatini Magistrates Court on 13 March 2000, for contravening Section 32(1) (b), 2 and 36 of Act 75 of 1969, Unlawful Possession of Hand Grenades, a Arm and Ammunition
2. Subject fled the country on the 30th of March 2000 when he realised a warrant for his arrest had been issued.
3. The Department of Home Affairs (DHA) Movement Control System (MCS) indicates that the subjects last recorded movement was a departure from Johannesburg International Airport, with British Airways Flight 054 on 30 March 2000.
4. Subject was last known to be in the United Kingdom (UK).
5. Subject could not be extradited as the UK refuse extradition in the case of political offences.
6. The paragraph 1 supra offences prescribe during April 2014.
7. In light of the following it is recommended that the outstanding J50 be withdrawn before the offences prescribe:
 - 7.1 The case is nearly twenty years old.
 - 7.2 Many witnesses have already died or moved.
 - 7.3 The whereabouts of many witnesses are unknown and it will take a lot of time and expense to trace them.
 - 7.4 The case against the accused is complicated and witnesses can no longer remember all the facts.
 - 7.5 Some of the witnesses may even refuse to testify due to political reasons.
8. It has been established from INTERPOL that no Red Notice has been issued and subject is

not listed as wanted on their systems.

9. The subject is not circulated as wanted on the DHA MCS.
10. The South African Police Service (SAPS) Criminal Record Centre (CRC) has not list the subject as wanted.
11. If one considers all the facts, this office feels it may be futile to seek prosecution, should the subject decide to return to South Africa before the offences prescribe.
12. It is therefore recommended that the NPA close these cases against the subject to prevent any embarrassment should the suspect return to South Africa.

COLONEL
COMMANDER: CRIMES AGAINST THE STATE: ORGANISED CRIME:
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
N XABA

M.O.P.



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VISION

Justice in our society so that people can live in freedom and security.

MISSION

Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear, favour or prejudice, and by working with our partners and the public to solve and prevent crime.





SUBMISSION TO THE EXECUTIVE AUTHORITY

September 2008

Members of Parliament
Ms Bridgitte Mabandla MP, Minister for Justice and Constitutional Development

SUBMISSION OF THE NPA'S ANNUAL REPORT 2007/08

I have the honour of submitting to you the 2007/08 Annual Report of the National Prosecuting Authority (NPA).

The NPA Annual Report has been prepared according to the provisions of the:

- Public Finance Management Act (PFMA), 1999 (Act No.1 of 1999), and the
- National Prosecuting Authority Act 32 of 1998.

The report is structured in sections that report on the Governance, Delivery and Resourcing activities of the NPA, with annexures that provide supporting information.

The NPA has endeavoured to accurately and concisely provide all information required by the above legislation and regulations. In part, it also offers brief commentary on ongoing or planned NPA activities in the 2008/09 financial year.

Yours sincerely

Adv Mokotedi J Mpshe
Acting National Director of Public Prosecutions
September 2008



UN closed meeting of nuclear experts

In December 2007, the United Nations (UN) convened a meeting of 15 nuclear experts in order to review the international instruments relating to nuclear terrorism. The senior prosecutor in the Geiges and Wisser matter was identified as one such expert and invited to attend the meeting. The other delegates were from the IAEA and the nuclear weapons States recognised by the NPT. The South African mission in Vienna was commended for the member's contribution to the workshop. As a follow-up to this meeting, the prosecutor was requested to provide training in the field of maritime terrorism as part of a UN training programme for merging nations.

Terrorism

The PCLU was appointed to execute a request for mutual legal assistance, submitted by the UK Crown Prosecution Service relating to the prosecution of persons implicated in the attempt to place explosives on airliners en route from the UK to the USA. It was alleged that these acts were committed by persons sympathetic to Al Qaeda. The evidence supplied contributed to the conviction of one of the persons charged and the PCLU was commended for its assistance. The assistance rendered has also been relied on in a prosecution against eight other members of the conspiracy.

Mutual Legal Assistance

S v Geiges, Wisser & Krisch Engineering (Pty) Ltd

Arising from the conviction of Wisser, requests for mutual legal assistance were received from certain foreign States. The PCLU rendered assistance to DoJ&CD's International Affairs Division responsible for making recommendations to the Minister in terms of the International Co-operation in Criminal Matters Act, No 75 of 1996. A request for assistance was also submitted by the PCLU to Switzerland relating to financial transactions arising from Wisser's conviction.

Failed coup d'etat on Equatorial Guinea

The PCLU had a series of meetings with representatives of the UK Crown Prosecution Service in connection with the UK investigations into the above coup. The purpose of these meetings was to establish a framework for mutual legal assistance.

Truth and Reconciliation Commission (TRC) Prosecutions

S v Van der Merwe & Others

In August 2007, the former Minister of Law and Order, Adrian Vlok, former Head of the South African Police, Johan van der Merwe, and three other former Security Branch members pleaded guilty on a charge of attempting to poison Reverend Frank Chikane, the Director-General in the Presidency. This is the first case where an Executive of the Apartheid Regime admitted to complicity in the commission of human rights abuse directed against the Liberation Movement.

Other Matters

Requests to look into other matters have been received and these must be processed according to the TRC Guidelines.

Missing Persons Task Team

The Missing Persons Task Team continued to conduct research and investigations into the tracing of the remains of persons who disappeared during the period of conflict covered by the TRC. Ongoing investigations recovered seventeen human remains from both formal burial sites and informal secret disposal sites. Key investigations included:

- The remains of two Azanian People's Liberation Army (AZANLA) operatives who were shot dead in 1981. They were traced to pauper graves in Zeerust and exhumed in the presence of their families. DNA identification was positively concluded.
- The remains of two Umkhonto weSizwe (MK) operatives who were killed by the Security Forces were traced to pauper graves in Mmabatho and DNA identifications were also successful.
- Protracted excavations were conducted at Post Chalmers farm near Cradock in the Eastern Cape. Security Branch members unsuccessfully applied for amnesty for the murder of five prominent anti-apartheid activists: the Pebco 3, Sipiwo Mthimkulu and Topsy Madaka. Significant portions of burnt human remains were uncovered, contradicting the version of the Security Branch members during their amnesty hearings. The burnt remains and associated artefacts are currently undergoing forensic analysis.



- The remains of four MK operatives who were shot dead in June 1986 by the then Western Transvaal Security Police were located amidst other buried paupers at Lethabong, a small village near Rustenburg in North West Province. DNA testing is still underway.
- The remains of a further four MK operatives were uncovered during excavations in Thohoyandou. DNA testing is still underway to provide conclusive identifications.

The Missing Persons' Task Team continues to work in close conjunction with the TRC Unit in the DoJ & CD as well as other State structures such as the South African Heritage Resources Agency (SAHRA), National Heritage Council (NHC) and Freedom Park Trust. Liaison with None-governmental organisations (NGOs) and victim organisations continues on a case by case basis. Cabinet approval of the National Exhumation Policy is still pending.

Stakeholder engagement

In order to deliver on its mandate, the PCLU interacts closely with other affected government departments and strives to conduct its business by adopting a multi-disciplinary approach.

Forecast for 2008/09

The PCLU will continue to display vigilance with regard to its primary mandate of serious national and international crimes which impact State security. In conjunction with its stakeholders, it is structured to take effective action in respect of any new matters detected.

The Missing Persons' Task Team is expected to continue to make further inroads with its investigations and make a meaningful contribution to the implementation of the National Exhumation Policy.

Justice • Freedom • Security



National Prosecuting Authority

Annual Report 2008/09



NATIONAL PROSECUTING AUTHORITY
South Africa

M.A. R

Noteworthy Cases

S vs Apex Truck & Trailer (Pty) Ltd: On 15 December 2008, the accused pleaded guilty and was convicted on a charge of exporting an armoured vehicle to the Democratic Republic of Congo (DRC) in contravention of the National Conventional Arms Control Act. The company was sentenced to a R60 000-00 fine, half of which was suspended under appropriate conditions. The court commended the PCLU member for the thoroughness in the presentation of the matter.

S vs Geiges: In November, the Swiss Government repatriated in excess of R1 million, being the proceeds of the crimes in respect of which Geiges had been convicted of earlier in the year. The money was repatriated as a result of a series of requests for mutual legal assistance and as a result of protracted negotiations between the PCLU and the Swiss Attorney-General and Ministry of Justice.

Singh vs the Minister DoJ&CD: Assistance was given to Counsel acting for the Minister to defend the claim which proceeded in October 2008. The Acting NDPP was subpoenaed as a witness. A final order of costs was made against the plaintiff and the action will continue in early 2009. This action is relevant to two other actions brought by the plaintiff against the NPA and has serious implications as regards the NPA's liability for prosecutions.

Missing Persons Task Team (MPTT)

The five families were presented with reports that the MPTT is satisfied that all evidence confirmed that the remains exhumed are those of the Pebco 3 and Siphwo Mthimkulu and Topsy Madaka. Preparation for the handover of remains must now take place through the Truth and Reconciliation Committee (TRC) Unit in the DoJ&CD.

Former Vlakplaas commander Dirk Coetzee accompanied the MPTT to point out sites near Komatipoort where Sizwe Kondile was reportedly killed and burnt. The site of the burning and disposal of the remains of two other Mkonto We-Sizwe members were also pointed out. A plan for the excavation of the Kondile site is being developed.

Donor funds have been secured for the DNA lab at University of the Western Cape (UWC) which processes our DNA bone samples, which will serve as the first human rights DNA lab in Africa. The nature of the partnership with the lab is being finalised through meetings with the relevant parties at UWC and the head of the PCLU and the MPTT.

Stakeholder Engagement

The PCLU was approached by the NIA to render assistance to the latter's Counter Espionage Functional Committee (CEFC) so as to enhance its ability to successfully investigate espionage matters. At the request of Justice College, the PCLU provided specialised training to prosecutors in the fields of Mutual Legal Assistance, Extraditions and the Implementation of the Rome Statute of the International Criminal Court Act, which domestically criminalises genocide, crimes against humanity and war crimes. The PCLU engaged the Department of Minerals and Energy, the Nuclear Energy Corporation of South Africa and the Proliferation Council, the FIC and SAPS. Various foreign investigative agencies have been assisted with requests for Mutual Legal Assistance. The PCLU played a leading role in the formulation of a Memorandum of Understanding between the South African Revenue Service and the Non-Proliferation of Weapons of Mass Destruction council.

The MPTT in conjunction with the Centre for the Study of Violence and Reconciliation (CSVR) made a presentation to a delegation from the Justice Department and NGOs from Uganda. The task team liaises with national and regional heritage structures and participated in the formulation of policy on the repatriation of heritage items from abroad. The South African Heritage Resources Agency (SAHRA) grants exhumation permits. The task team liaises with political parties to whom those exhumed belonged, including the African National Congress (ANC), Azanian People's Organisation (AZAPO) and the Pan Africanist Congress (PAC) and held a meeting with Umkhonto we Sizwe Military Veterans Association (MK MVA) leadership. Joint activities are undertaken with the TRC Unit in the DoJ&CD). Collaboration with NGOs, primarily the CSVR, and with Khulumani Victim Support Group also continues.



M. D. J.

Challenges Experienced

The TRC Guidelines were declared unconstitutional and invalid by the North Gauteng Provincial Division of the High Court. A decision to appeal the judgment will be made early in 2009. A further delay in the prosecution of cases emanating from the TRC process is therefore inevitable.

The Cape High Court declared the search and seizure warrants executed by the SAPS in its first official terrorism investigation in terms of Protection of the Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA) unlawful. Leave to appeal has been granted. Should the appeal be dismissed, the evidence obtained as result of the execution of the search and seizure warrants would be inadmissible and would negatively affect a decision to prosecute.

In so far as the MPTT is concerned, DNA testing has been placed on hold pending the finalisation of the donor funding to the DNA lab and the resolution of certain staffing matters. This will delay the finalisation of certain cases.

The issue of the quality of police investigations is on an ongoing basis taken up with senior police management with the aim of improving the turnaround time of such investigations. The investigations are dealt with in terms of Prosecution Guided Investigations (PGI) principles to try and bridge shortcomings.

Forecast

The PCLU will continue to focus on all the investigations which are currently in progress with the aim of being able to make properly informed timely decisions on them. The PCLU will continue to maintain and develop the existing stakeholder relationships and focus on addressing blockages. The MPTT plans to check the missing person's cases against SAPS Criminal Records, as well as to undertake a number of exhumations during the non-rainy winter months.



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

TO : ADV MJ MPSHE SC
ACTING NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

FROM : DR MS RAMAITE SC
DEPUTY NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

DATE : 25 MARCH 2008

SUBJECT : 1. *S v LETHLAPA MPH AHLELE*
(HEIDELBERG TAVERN AND ST JAMES CHURCH
MASSACRES)

2. *S v SEBASTIAAN (BASIE) SMIT*
(POISONING OF REV FRANK CHIKANE)

Tel: (012) 845 6473
Fax: (012) 845 6337

Dear Adv Mpshe

1. PURPOSE OF MEMORANDUM

In pursuance of a previous memorandum by Adv AR Ackermann SC of the Priority Crimes Litigation Unit (PCLU), dated 23 August 2007, which was addressed to the National Director, Adv VP Pikoli, authority from the Acting National Director is hereby requested to proceed with the investigations into the following matters with the aim of potential prosecutions being instituted:

- (i) Lethlapa Mphahlele for his role in the Heidelberg Tavern and St James Church massacres.
- (ii) Sebastiaan (Basie) Smit for his role in the attempted

murder of Rev Frank Chikane.

2. BACKGROUND

2.1 **S v LETHLAPA MPHAHLELE**

A number of APLA cadres involved in the above attacks applied for and subsequently received amnesty from the TRC for their roles in the above attacks. These individuals have implicated Mr Mphahlele as having given the directive for the above attacks.

Mr Mphahlele applied for blanket amnesty without disclosing his role in the above attacks and as a result, his application was dismissed without him formally appearing before the TRC.

The PCLU has received information from a senior member of the Democratic Alliance to the effect that Mr Mphahlele had publicly confessed to having given the orders for the carrying out of the above attacks during a live radio broadcast in which she had participated. Information has also been received that Mr Mphahlele has on numerous occasions, both locally and abroad, publicly proclaimed to have given the orders for the above attacks.

In addition hereto, the father of one of the victims in the Heidelberg Tavern Massacre has requested that a prosecution be instituted against Mr Mphahlele for his role in this attack.

In a document titled "*REPORT ON THE PROGRESS MADE BY THE TASK TEAM ON TRC CASES*" dated 29 November 2006, I brought it to the National Director's attention that the TRC Task Team has recommended that the investigation into Mr Mphahlele's role in the above attacks should continue with the view of prosecuting him.

In a letter, dated 8 August 2007, from Assistant Commissioner Jacobs addressed to me, the names and telephone numbers of investigators to assist with TRC investigations are identified. A copy thereof is attached hereto, marked **Annexure "A"**. However, the identity and telephone number for an investigating officer from the Cape Province is still awaited.

Advocates Shaun Abrahams and Mthunzi Mhaga, both Senior State Advocates of the PCLU, have been identified to manage the investigations and prosecute this matter, should the need arise.

2.2 **S v SEBASTIAAN (BASIE) SMIT**

Mr Smit is implicated for his role in the poisoning of Rev Frank Chikane by individuals who recently pleaded guilty in **S v Van der Merwe & 4 Others** on a charge of attempted murder. As part of the plea and sentence agreement, these individuals have undertaken to avail themselves to testify against Mr Smit in this regard.

Dr JP (Torie) Pretorius SC, a Deputy Director of Public Prosecutions of the PCLU, has

been identified to manage this investigation and prosecute the matter should the need arise.

3. RECOMMENDATION

It is recommended that:

- 3.1 the Acting National Director authorize the recommendation by the TRC Task Team that the investigation into Mr Mphahlele's role in the Heidelberg Tavern and St James Church massacres be investigated with the aim of a potential prosecution.
- 3.2 the Acting National Director authorize the investigation into the role of Mr Basie Smit regarding the poisoning of Rev Chikane with the aim of a potential prosecution.
- 3.3 the Acting National Director authorize the persons, as identified *supra*, to manage these investigations and ultimately prosecute the matters should the need arise.

Kind regards

DR MS RAMAITE SC

APPROVED / ~~NOT APPROVED~~

ADV MJ MPSHE SC

ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE:

I need to direct that prosecution should not be instituted since my authorization.

25. At the meeting those gathered requested me to chair because Mr Selebi indicated that he intended to make inputs and therefore would not be in a position to co-chair the meeting.
26. I do not recall how many meetings in all the cluster members had with Adv Pikoli and his team, so I propose to discuss the issues generally and not link them to any specific meeting or sequence.
27. In the meeting, which had only one agenda item, the approach was informal. The meeting though had order. In my observation, there was clearly tension. One could see from the body language of everyone. The colleagues were however polite and respectful towards each other. This surprised the meeting because in the engagements on the other issues of the cluster, we had grown to know that these were close comrades from exile who had known each other for a long time. We expected them to be far more friendly towards each other than they were. The meeting also sensed that the issues were, in any event, weighty and that could have contributed.
28. Adv Pikoli was accompanied by Adv Ackerman SC. I recall at some point Mr Mthunzi Mhaga, Adv Shaun Abrahams and Adv McAdams in the meeting or possibly a later one. These were the prosecutors in the PCLU. It is possible that the others may have been in a subsequent meeting.
29. The meeting then informed Adv Pikoli of the discussions of the members of the cluster and that they had tasked me to go meet with him as described above. They then confirmed the message that I had communicated to Adv Pikoli in our meeting. I do not recall the exact sequence that the inputs were made but most of them spoke to the issue, in particular then SecDef, NasComm and DG NIA.

30. The response of Adv Pikoli was exactly as he had stated to me in our meeting. He indicated that since Ackerman was the head of the PCLU, it was his job to oversee all the work of the unit including the TRC cases and for that reason, he would not remove him.
31. The mood in the meeting changed and there was tension. The members wanted to know why in the light of the concerns raised Adv Pikoli insisted on retaining Ackerman in that role. The members did not have a problem with Ackerman heading the PCLU, but just his involvement in the cases. They argued that since there are other prosecutors in the PCLU, any one of them could be assigned the responsibility for the. cases. Adv Pikoli insisted on his position.
32. At some point in the discussion, Adv Pikoli asked Ackerman to make inputs and inform the cluster members what the PCLU was actually doing in going about its work.
33. Ackerman stated that the PCLU had done some investigations and was in fact advanced on a number of cases. He indicated that it was ready to commence with at least one or two prosecutions, but that more work was needed on the others. He stated further that the PCLU had taken statements from various individuals, interviewed them and was analyzing them as part of its investigations. It was made clear that despite the concerns of the members of the cluster, the PCLU was going to continue with its work.
34. Ackerman then indicated that, in any event, as part of its work, some people – he didn't name them – had approached the PCLU to file complaints about their treatment or the treatment of people that they knew by the ANC in exile. He stated that the PCLU had taken their statements and had investigated their claims and

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- 52 When Mr. Mpshe was appointed, I was completing the nuclear weapons case and not involved in any TRC matters. Even after I completed the prosecution of the nuclear weapons case in September 2007, I did not immediately become involved in TRC matters.
- 53 I next became involved in TRC cases in September 2008, when Mr Ackermann, the head of the PCLU at the time, informed me that I would be assuming his responsibilities on a task team established by Mr Pikoli to address all TRC matters. My instructions for taking over from Mr. Ackermann are recorded in a memorandum addressed to Dr. Ramaite dated 5 June 2008. A copy of the memorandum is attached as annexure “**AD18**”.
- 54 My instruction from Mr. Ackermann was to continue with the cases that had not been finalised by the Task Team and with the Pebco Three Case (three black South African anti-apartheid activists – Siphon Hashe, Champion Galela, and Qaqawuli Godolozzi), where a prosecution had been instituted, but no trial had commenced. The cases I took over from Mr. Ackermann did not include the Timol matter.
- 55 After taking over Mr. Ackermann’s responsibilities, I discovered that the TRC Committee (the Task Team) was not meeting, nor were any investigations being conducted. The fact that investigators had not been appointed did not prevent me from tasking two advocates to review existing material, and in order to identify aspects requiring investigations. I attach as annexure “**AD19**” an email I sent to Mr. Ackermann dated 09 July 2008, requesting him oversee the work of the two advocates while I was away from the office for a week.

Bundle 8: Adv RC Macadam

AD 457
87

sl/ audit trc cases



Office of the Head
Special National Projects
Directorate of Special Operations
HEADQUARTERS

INTERNAL MEMORANDUM

SCORPIONS

P. O. Box 752,
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VGM Building
Hartley St.
Weavind Park
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Pretoria
South Africa

Tel: (012) 845 6431
Cell: 082 498 6033

TO: NDPP REF: TRC GENERAL

CC: HEAD DSO
HEAD OPERATIONS
ADV ACKERMANN

FROM: HEAD SNPU

DATE: 15 MAY 2003

RE: AUDIT OF TRC CASES

A. CASES BEING PREPARED FOR PROSECUTIONS:

1. MOTHERWELL BOMBING

(a) Leg One

The accused were all refused amnesty. On review however the High Court ordered that their applications be reheard because the TRC failed to lead evidence. Investigations conducted by my office indicate that the accused supplied a false motive for killing the deceased. Evidence will be made available to the TRC so that amnesty can be refused on a proper basis. This will open the way for legs two and three.

(b) Leg Two

The three accused convicted in the 1996 prosecution were granted leave to appeal against their convictions to the SCA. I have taken over the argument of the appeal from the DPP Eastern Cape due to the fact that the prosecutor has retired.

(c) Leg Three

The prosecution of SAP General van Rensburg for ordering the killing of the Motherwell Four.

2. **BRIAN NGULUNGA**

The prosecution of SAP General van Rensburg for ordering the killing of Brian Ngulunga.

3. **PEBCO 3**

The prosecution of the Security Branch members responsible for the kidnapping of the deceased at Port Elizabeth Airport.

4. **WAUCHOPE**

Prosecution of AZAPO leader George Wauchope for murder and other related charges. I am awaiting the Minister's response to representations by the accused that he not be prosecuted.

5. **POWELL**

The prosecution of Phillip Powell for possessing hand grenades in April 1994. The matter is with the NDPP.

6. **NQUTU ARMS CACHE**

The prosecution of J. M. Nqobco and others for the concealment of the weapons found in the Nqutu Bunker in May 1999.

7. The prosecution of the CCB members responsible for the bombing of the Early Learning Centre (it must however be established that the accused did not receive indemnity in terms of the Indemnity Act of 1990).

B. POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE

1. **Murder of the PEBCO 3**

There is currently no reliable evidence on the murder charge. If the accused are however convicted of kidnapping it is likely that at least one of them may supply information as to the killings in order to obtain a lesser sentence.

2. **Cradock 4**

There is no reliable evidence on this case. The TRC however established that the crime was committed by the same people who were involved in the Motherwell and PEBCO 3 cases. The successful prosecution of these cases could lead to some of the perpetrators coming forward also to obtain lesser sentences.

C. NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES

1. Murder of the COSAS 4
2. Murder of Askari Strongman Sambo
3. Murder of detainee on the East Rand by "Timol" Coetzee
4. Murder of Askari Dan Maboto
5. Allegations by IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988
6. 447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit
7. 6-8 dockets linking AWB to Pre election bombings previously dealt with by Advocate Fick

D. HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE

1. Murder of Victoria Mxenge
2. Kidnapping, torture and murder of Ntombi Khubeka
3. Kidnapping, torture and murder of Nokutulu Simelane
4. Decision by DPP Pretoria not to prosecute SAP General Engelbrecht
5. Uninvestigated allegations against SAP General Bassie Smit
6. Ciskei Coup De AT
7. Transkei Coup De AT

8. Pre Election Train Violence in Gauteng
9. Murder of Reggie Hadebe
10. Murder of Dulcie September
11. Refusal of Amnesty to 37 High Ranking ANC officials
12. Decision by DPP KZN not to prosecute IFP hit squads

E. REPRESENTATIONS TO INVESTIGATE SPECIFIC CASES

1. Death in detention Ahmed Timol
2. Murder of UDF activist Nelson Sithole
3. Murder of Pro Jack
4. Murder of IFP families in Table Mountain by A. M. Zulu
5. Murder of ANC supporter Batondo
6. False Conviction of Skouldies
7. Assault on A. Bult
8. Vlakplaas member Piet Snyders
9. Murder of Castro Khumalo

F. CASES IN THE PROCESS OF BEING CLOSED

1. Assault on Carl Niehaus- complainant does not desire a prosecution
2. APLA murder Mphahlela attacks on police stations: lack of reliable evidence
3. Mphahlela murder charges- lack of admissible evidence against him
4. Winnie Mandela- lack of reliable evidence
5. Steve Biko- crime prescribed in 1997
6. Smit Murders- perpetrators deceased
7. Ermelo Black Cats- lack of reliable evidence
8. IFP Murders Chadwick- accused in a mental institution in the United Kingdom

G. ASSISTANCE TO OTHER AGENCIES

1. Police Intelligence supplied with a breakdown of AWB amnesty hearings to assist in profiling of persons currently involved in Right Wing Activities
2. TRC supplied with material relating to IFP human rights abuses to assist them to oppose IFP application to have findings against it set aside

H. REPARATIONS RELATED ACTIVITIES

1. Exhumation of bodies of Mamelodi 10
2. Reparations of remains of victims in the Kwaggasnek incident in Lesotho
3. Representations by members of the public to locate their missing relatives
4. Partnership with SA Disappearance Foundation

I. INVESTIGATION PUT ON HOLD PENDING THE APPEAL IN THE BASSON CASE RELATING TO JURISDICTION FOR CONSPIRACY TO COMMIT CRIMES OUTSIDE THE RSA

1. Murder of Anton Lubauwski
2. Lesotho Raid
3. Botswana Raid
4. Swaziland Raid

J. POLICY CONSIDERATIONS

1. Prosecutions not to be conducted on a piece meal basis except where special circumstances (e.g. witness on point of death, accused about to leave RSA or engaged in current criminal activities)
2. Once all the cases earmarked for prosecution have been investigated a presentation will be given to the NDPP in order for him to confirm the prosecution strategy. Thereafter prosecutions will be instituted
3. After convictions have been obtained attention will be given to cases which currently had evidence since convictions may act as incentive for perpetrators to come forward

Kind regards,



.....

ADV. R. C. MACADAM

HEAD

SNPU

75 According to the Terms of Reference, the Commission must determine:

“whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases; whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them;.....”

76 I can state that during my time handling TRC cases and serving in the “TRC Task Team”, I never experienced any attempt or efforts to influence or pressure me to stop investigating or prosecuting TRC cases. However, I consider the conduct of my former supervisor, Nigel Carpenter with regards to the case of State v Aaron Tyani and Phumelele Gumengu to have been obstructive.

E THE PERIOD 2007-2009

77 From late 2007 until approximately June 2009, there was a marked decline in progress on TRC-related matters. As a result, the TRC Task Team became largely dysfunctional, and my role within that structure was effectively rendered redundant. This position is confirmed by Adv Chris Macadam in paragraphs 55 to 58 of his affidavit submitted to this Commission. To the best of my knowledge, and based on my direct involvement at the time, this decline was not attributable to any political interference.

78 This was a professionally difficult period, characterised by a lack of prosecutorial work. In an effort to maintain my courtroom proficiency, I requested my former DPP, Mr Lusu, to permit me to undertake circuit court work in the Transkei. That arrangement endured for a limited period. Upon my return to Pretoria, I requested Adv Ackermann SC to facilitate my secondment to the Specialised Commercial Crime Unit (SCCU) in Pretoria, in order to broaden my experience beyond the general prosecution work I had undertaken in Mthatha and at the PCLU.

South African Police Service  *Suid-Afrikaanse Polisiediens*

Private Bag
Privaatsak X94

Fax No:
Faks No:

Your reference/U verwysing:

My reference/My verwysing: 3/5/2(308)

Enquiries/Navrae:

Acting National Comm. T Williams

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THE NATIONAL COMMISSIONER
DIE NASIONALE KOMMISSARIS
PRETORIA
0001

Advocate Mpshe
Acting Director of Public Prosecutions
Private Bag X752
Silverton
PRETORIA
0001

Dear Advocate Mpshe

INTERDEPARTMENTAL TASK TEAM DEALING WITH POST – TRC MATTERS

The representative of the South African Police Service received an invitation for a meeting of the above-mentioned Task Team scheduled for 13 March 2008.

As you know, there had been correspondence between the National Commissioner and the National Director of Public Prosecutions about the interpretation of the role and functions of the Task Team *vis-a-vis* the Director – General, of the Departments represented in its, Advocate Pikoli agreed that there is a difference of opinion on the matter, and undertook to take the matter up with the Minister of Justice and Constitutional Development (a copy of the letter is attached for your convenience). To date no feedback has been received and the matter remains unresolved.

Until such time that the matter has been cleared up, I am of the view that the Committee cannot function meaningfully.



Please inform me as soon as possible of how you see the role of the Directors-General of the Departments involved in the Task Team.

Until such time that the matter is resolved, I have instructed the representatives of the South African Police Service not to attend meetings of the Task Team.

Your urgent response will be appreciated.

With kind regards.



**ACTING NATIONAL COMMISSIONER
TC WILLIAMS**

Date: 2008/08/07

PCJ 3497



IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case Number: 32079/07

In the matter between:

THEMBISILE PHUMELELE NKADIMENG 1ST APPLICANT

NYAMEKA GONIWE 2ND APPLICANT

NOMBUYISELONOLITA MHLAULI 3RD APPLICANT

SINDISWA ELIZABETH MKHONTO 4TH APPLICANT

NOMONDE CALATA 5TH APPLICANT

KHULUMANI SUPPORT GROUP 6TH APPLICANT

**CENTRE FOR THE STUDY OF VIOLENCE AND
RECONCILIATION (AN ASSOCIATION NOT FOR GAIN
INCORPORATED UNDER SECTION 21 OF THE
COMPANIES ACT 61 OF 1973)** 7TH APPLICANT

**INTERNATIONAL CENTRE FOR TRANSITIONAL
JUSTICE (AN ASSOCIATION NOT FOR GAIN
INCORPORATED UNDER SECTION 21 OF THE
COMPANIES ACT 61 OF 1973)** 8TH APPLICANT

And

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

1ST RESPONDENT

THE MINISTER OF JUSTICE

2ND RESPONDENT

ERIC ALEXANDER TAYLOR

3RD RESPONDENT

GERHARDUS JOHANNES LOTZ

4TH RESPONDENT

JOHAN MARTIN VAN ZYL

5TH RESPONDENT

HERMANUS BAREND DU PLESSIS

6TH RESPONDENT

WILLEM HELM COETZEE

7TH RESPONDENT

ANTON PRETORIUS

8TH RESPONDENT

FREDERICK BARNARD MONG

9TH RESPONDENT

MSEBENZI TIMOTHY RADEBE

10TH RESPONDENT

ANSWERING AFFIDAVIT



M. M. M.

I, the undersigned,

MOKOTEDI JOSEPH MPSHE

1. do hereby make oath and state that:

1.1 I am a Deputy National Director of Public Prosecutions, appointed by the President of the Republic of South Africa in terms of section 10 of the National Prosecution Authority Act 32 of 1998. I am currently serving as the Acting National Director of Public Prosecutions and in that capacity as the head of the office of the National Director of Public Prosecutions and the National Prosecuting Authority (“NPA”).

1.2 The facts deposed to herein are within my personal knowledge, except where I indicate otherwise or the context indicates to the contrary, and are both true and correct.

1.3 Any legal submissions that I make herein are submissions that flow from legal advice that I obtained from my legal representatives and which I verily believe to be correct.



Mokotedi Joseph Mpshe

2. I have read the Notice of Motion brought by the applicants, the founding affidavit of **THEMBISILE PHUMELELE NKADIMENG** (“Nkadimeng”), a supplementary affidavit of Nkadimeng and the annexure thereto. I am advised that it might be useful prior to dealing with each and every allegation in the founding papers, to set out in brief:

2.1 The First and Second Respondent’s understanding of the challenges raised in the applicant’s case;

2.2 raise preliminary argument why the application stands to be dismissed for want of sufficient particularity to disclose a cause of action;

2.3 Deal briefly, with the first respondent’s answer to the challenges raised by the applicants;

2.4 Finally, deal with each and every allegation contained in the applicants’ papers.



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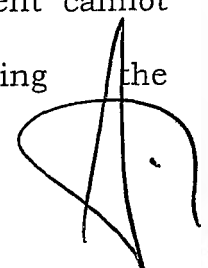
APPLICANT'S CASE

Stay of the Policy Amendments

3. I now turn to deal with the applicants' case. In the first instance the applicants seeks a relief that the National Prosecution Policy dated 1 December 2005 ("the policy amendments") be and is suspended and stayed pending the final outcome of the application declaring such a policy to be inconsistent with the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The relief for the stay of the policy amendments is bad in law for the following reasons:

3.1 The applicants do not make out a case why the policy amendments are to be stayed and suspended pending the Constitutional review of those policy amendments.

3.2 In particular the applicants do not furnish any reasons why, as a matter of law, the first respondent cannot discharge its responsibilities including the



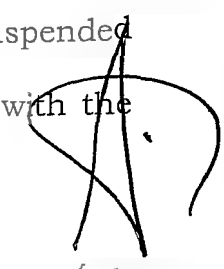
HRM

implementation of the policy amendments which it is enjoined in law to do;

3.3 I mention that the adoption of the prosecution policy is mandated by the provisions of the Constitution. The first respondent is obliged, in the execution of its duties, to inform its decision in terms of a prosecution policy properly adopted and to which there is concurrence by the second respondent. The second respondent has indeed concurred to the adoption of the policy amendments. They are now a matter of law.

3.4 Further, the applicants do not assert nor establish a case that they have a clear right to the relief that the first respondent's is to be restrained from implementing a provision of law pending a Constitutional review of those policy amendments. After all, the nature of the relief is interdictory.

3.5 Without the applicants' furnishing full particularity relating to this relief (including in its supplementary affidavit) why the policy amendments are to be suspended and stayed, the respondents are unable to deal with the



relief in the answering affidavit. The only opportunity for any of the respondents to furnish an answer to the applicant's case lies in this stage of the process unless otherwise permitted by the Honourable Court.

3.6 I am advised that an attempt by the applicants to augment or supplement any papers in the replying affidavit will be impermissible and that the second respondent would move to have any such attempt allowed.

Grounds of Attack

4. The applicants, in summary, also seek to have the policy amendments declared in consistent with the Constitution, and as they argue, both unlawful and invalid. The bases for the attack are multiple. I will deal with each one *seriatim*.



Victims' Right to Dignity

5. The first attack is that the Policy amendment violates a victim's right to dignity. This claim is bad both in law and fact for the following reasons:

5.1 The applicants submit that the Policy amendments protect the perpetrators of gross human rights violations at the expense of the victims of crime and their families. This argument is misplaced. The reading of the Policy amendment does not even purport to offer any protection to the perpetrators of human rights violations.

5.2 The prosecution of crime is precisely aimed at punishing perpetrators of any crime where a conviction is obtained before a competent court of law. It is difficult to understand why the applicants would argue that the implementation of the Policy amendments is aimed at protecting the perpetrators of gross human rights violations.



5.3 The applicants do not furnish any evidence or information why the Policy amendments are contended to be offering any protection to the perpetrators of human rights violations. For this reason, the second respondent will not be able to offer a complete adequate answer to this challenge. Again the respondents are put at a serious of disadvantage by reason of this unsubstantiated submission.

5.4 The implementation of the Policy amendments, quite contrary to the contentions of the applicants, will take into account all the relevant factors including the interest of the victims and their families. The applicants do not explain why they contend that the Policy amendments will be implemented contrary to its terms.

Denying the Victims Justice

5.5 The applicants also allege, without evidence, that the victims and their families would have justice denied to them. As I mention, the implementation of the Policy amendments is aimed at achieving the exact opposite.



5.6 Furthermore, the first respondent has a Constitutional mandate, on behalf of the Government, to bring to justice any and all offenders where evidence is available. The object is ultimately that justice is served.

5.7 Since the applicants have not furnished any information why the implementation of the policy would cause suffering to victims of crime and their families, the respondents are unable to offer a complete and adequate answer to the challenge

Reaching Closure

5.8 The applicants argue that the implementation of the Policy amendments prevents victims of crime and their families from reaching closure or resolution of past injustices. In this regard the applicants do not offer any evidence or information on why they contend the implementation of the Policy amendments would have this impact;



NEM

5.9 The respondents are left to guess why this contention is made. This approach to Constitutional litigation has been consistently deprecated by our courts. The respondents, in meeting a Constitutional attack are entitled to know the full facts and circumstances of the attack to enable an answer and a proper adjudication of the challenge by the courts;

5.10 I do not understand what the applicants mean when they say the implementation of the policy amendments precludes the victims and their families from reaching closure and resolution of past injustices. It is again difficult to meet this attack on factual basis. In any event even where prosecutions are full, complete and successful whether or not the victims or their families find closure is sometimes elusive.

Dishonour the Victims

5.11 The applicants contend, again without any factual basis, that the implementation of the policy would dishonour the respect, dignity, value and acceptance of victims and



investigate and prosecute perpetrators who infringed this right by committing acts of murder and enforced disappearances, and by failing to give value to the lives of victims. This attack is, with respect, without merit.

5.21 The applicants do not furnish any factual basis why they contend that the first respondent will, in implementing the Policy amendments, decline to prosecute perpetrators of acts of murder and enforced disappearances.

5.22 The first respondent has not declined to investigate any commission of acts of murder and enforced disappearances. The primary responsibility of investigating crime lies with the South African Police Services and the first respondent is obliged, in appropriate circumstances, to prosecute all criminal offences and will continue to do so.

5.23 The applicants' raise this attack in these papers at a hypothetical level and make it immensely difficult for any of the respondents to meet this challenge in concrete terms.

victims' families in the wider community. Without facts it is difficult to comprehend the attack in the first place;

- 5.12 Further the implementation of the Policy amendments and wherever this phrase appears, including the implementation of the Prosecution Policy as a whole is to prosecute all crime, where competent, in furtherance of the dignity of the victims, their families and for that matter that of the offender as well.

Demean South African Society

- 5.13 The applicants contend that the South African society as a whole would be betrayed by the implementation of the Policy amendments.

The applicants argue that the policy amendments betray the Constitutional compact made with victims as enshrined in the epilogue to the Interim Constitution by undermining the purpose and spirit behind the Truth and Reconciliation Commission ("TRC"). This argument is wrong as I demonstrate hereunder.



NKADIMENG

5.14 The Policy amendments were triggered, in part, by an appreciation that there are certain individuals who, having underwent the TRC process, did not receive amnesty for one or other reason. In the main, the TRC had considered that the individuals did not meet the requirements of full disclosure to qualify for the amnesty.

5.15 The TRC processes had also recommended prosecution of those individuals who did not receive amnesty. There were also individuals who did not go through the TRC process and in respect of whom there would be evidence implicating them in the commission of gross human violations. This category of individuals was to be dealt with under an amended Prosecution Policy.

5.16 It must be appreciated that the purpose of the amended Policy is indeed to ensure that the objects for which the Interim Constitution authorised the reconciliation process through the TRC process as well as the legislation implementing the TRC process, should not be undermined.



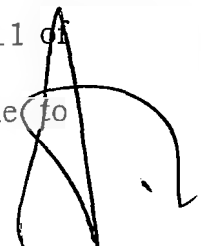
5.17 The Policy amendments are conscious that they are not a process in terms of which individuals are to receive any amnesty. The first respondent is not authorised to grant any amnesty. The TRC process was a specific legislative process that authorised amnesty subject to the conditions and terms of that legislation.

5.18 I therefore deny that the Policy amendments can be considered or have an impact of undermining the Constitutional compact that the South African society made with the victims of human rights violations.

5.19 The applicants have failed to give factual information supporting the conclusion that the Policy amendments can be read to mean a violation of the victims' rights to dignity or the dignity of their families.

Violation of the Right to Life

5.20 The applicants argue that the Policy amendments violate the rights of victims to life protected under section 11 of the Constitution by permitting the state to decline to



investigate and prosecute perpetrators who infringed this right by committing acts of murder and enforced disappearances, and by failing to give value to the lives of victims. This attack is, with respect, without merit.

5.21 The applicants do not furnish any factual basis why they contend that the first respondent will, in implementing the Policy amendments, decline to prosecute perpetrators of acts of murder and enforced disappearances.

5.22 The first respondent has not declined to investigate any commission of acts of murder and enforced disappearances. The primary responsibility of investigating crime lies with the South African Police Services and the first respondent is obliged, in appropriate circumstances, to prosecute all criminal offences and will continue to do so.

5.23 The applicants' raise this attack in these papers at a hypothetical level and make it immensely difficult for any of the respondents to meet this challenge in concrete terms.



Violation of the Right to Freedom and Security of the Person

5.24 The applicants charge that the Policy amendments violates the rights of victims to freedom and security of the person by authorising the State not to investigate and prosecute perpetrators who violate the freedom and security of people by committing acts of torture, assault and other cruel and inhuman treatment. This contention is wrong.

5.25 Again the applicants make a statement without supporting that statement with any factual information. There is no description to which acts of torture, assault and other cruel and inhuman treatment the applicants are referring to. It is therefore impossible to give a complete and accurate answer to the charge.


MRM

Violation of the Right to Equal Protection Before the Law

5.26 The applicants argue that the Policy amendments violate the rights of victims to equal protection and benefit of the law by discriminating against persons who were victims of crime committed prior to 11 May 1994 and which crimes were committed in furtherance of a political objective. The applicants also contend that the policy amendments further violate section 9(1) of the Constitution by offering people who did not receive TRC amnesty another opportunity to escape justice. This attack is also unsubstantiated and without merit.

5.27 The applicants do not offer the factual basis on which their contentions in this regard rest. For that reason, none of the respondents are able to give a complete answer to the challenge.

5.28 The Policy amendments, properly construed, cannot bear the meaning that the applicants are contending for.

These Policy amendments are no more than to guide the first respondent's prosecutorial decision and conduct. They are to be implemented within the framework of the law.

5.29 I need to emphasise, unlike the TRC process that the Policy amendments do not purport to remove the rights of anyone to institute private prosecutions or find civil redress in courts of law against any person. On the contrary, in the event that the first respondent, specific to any particular case, were to issue a *nulla prosequi*, this in itself would not remove the right of individuals to institute private prosecution.

Respondent's Summary Answer

6. The first respondent give hereunder, its answer in summary to the applicants attack:

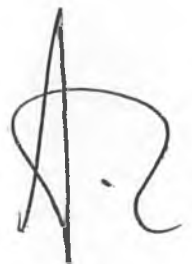
6.1 The first defendant has not made any decision regarding the subject matter covered by the Policy amendments and in particular regarding the matters that are raised in

these proceedings. For this reason alone, I am advised that legal argument will be made upon the hearing of this application that the application stands to be dismissed with costs.

6.2 I am advised that as a matter of law, the Policy amendments have been lawfully implemented and cannot be stayed pending the Constitutional attack in these proceedings.

6.3 I am advised further that the Policy amendments have a rational basis and can survive any Constitutional scrutiny.

6.4 I am advised further that the applicants are obliged in Law to give concrete factual information that predicates their Constitutional attack if for no other reason than to afford the respondents to answer fully to the challenge and the courts to bring a correct adjudication on that challenge. This, the applicants have failed to do.



6.5 The Policy amendments have correctly considered that they are not intended to be a process that can become a continuation of the amnesty process of the TRC. For this reason, no amnesty would be granted to anybody. The first respondent cannot, in law, grant anyone amnesty.

6.6 The prosecution of gross human rights violations are a difficult and complex matter. Not only are these offences perpetrated by sophisticated individuals with wide ranging political objectives through clandestine methods; it becomes necessary at times, for the successful prosecution of these offences, to enter into agreements with individuals who are able to help secure convictions in this regard.

6.7 The nature of the agreements that the first respondent would conclude with such people as may offer assistance in the prosecution of these offences would be through s204 of the Criminal Procedure Act, 51 of 1977.

6.8 The Criminal Procedure Act provides for indemnity against prosecution subject to such conditions including the fact that the person testifies in a satisfactory manner.



NESM

This determination is the one that is made by the relevant court and not by the first respondent.

6.9 The Policy amendments enjoin the first respondent to attach due weight to the human rights culture which the Constitution requires and fosters. So too, the Constitutional right to life; the fact that crimes of murder do not prescribe. More importantly the Prosecution Policy amendments state in their terms as follows:

“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.”

6.10 In the circumstances, I submit that the amended Policy is rational and its object is to discharge the duties of the first respondent under the law. I categorically deny that the Policy amendments are intended to offer any

extension of the TRC amnesty processes or to offer a further opportunity for the perpetrators of human rights violations to escape justice.

6.11 The adjudication of this matter, I am advised, appreciate that the decision to institute or continue a prosecution is not subject to review under the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA"). For that reason, the legislature has quite correctly appreciated that the independence of the first respondent is indispensable for him or her to discharge his or her functions under the Law and not at peril to have his or her decisions reviewed.

6.12 I now turn to deal with each and every allegation in the applicants papers.

7. AD PARAGRAPHS 1, 2 AND 3

7.1 Save to deny that the contentions made in these paragraphs are true and correct the remainder of the allegations made herein are noted.



N0.01

7.2 I deny that the applicants are entitled to any relief claimed in these proceedings.

8. AD PARAGRAPH 4

8.1 I deny the allegations made in this paragraph.

8.2 I repeat the contentions set out herein regarding the first respondent's position on the Constitutionality of the Policy amendments.

8.3 I particularly refute the allegation that the Policy amendments allow the National Prosecution Authority ("NPA") to reintroduce the amnesty provisions of the TRC.

8.4 I emphatically deny that the Policy amendments pretend or actually provide for any amnesty.



8.5 Under appropriate circumstances, the first respondent would conclude agreements contemplated in section 105A of the Criminal Procedure Act.

8.6 Under appropriate circumstances, a competent court, may offer indemnity against prosecution. A decision independently made by the court and not the first respondent.

9. AD PARAGRAPH 5

9.1 I note the allegations made in this paragraph.

9.2 I deny that the Policy amendments are open to attack on any of the grounds raised in these papers or any other grounds.

9.3 I specifically deny that the Policy amendments infringe any Constitutional rights or offend against any principle of the rule of Law.



HRM

10. AD PARAGRAPHS 6 TO 25

10.1 I note the allegations made herein.

10.2 Despite their undertaking, the applicants do not furnish any factual information regarding the implementation of the Policy amendments that would point to an infringement of any Constitutional rights alleged.

10.3 I reiterate that any contentions that the Policy amendments are un-Constitutional are wrong for the reasons set out hereinabove.

11. AD PARAGRAPHS 26 AND 27

11.1 I note the allegations made herein.

11.2 I can confirm that I have not made any decision regarding the case relating to the disappearance of Nokuthula Aurelia Simelane.



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11.3 The applicants' challenge of the Policy amendments based on this case is unfortunate and misdirected.

11.4 I am advised that some of the allegations made herein constitute matters that are a subject matter of continuing investigation and for that reason alone will be impermissible for me to respond to those matters.

11.5 For the purposes of this application, I am advised that the first respondent would not contest the factual correctness of the allegations made herein.

11.6 The concession made in this regard is made limited only to these proceedings and only for the purposes of assisting the above Honourable Court in the adjudication of these proceedings.

11.7 In the very nature of these types of cases, the applicants make statements concerning a whole host of people whose confirmatory affidavits have not been obtained and filed in these proceedings.



12. AD PARAGRAPHS 28 AND 29

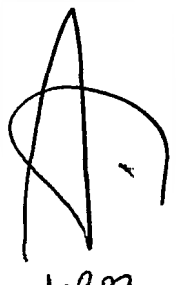
12.1 I note the allegations made herein.

12.2 I can confirm that I have not made any decision regarding the cases relating to Matthew Goniwe, Mhlauli, Mkhonto and Calata, commonly referred to as the Craddock Four.

12.3 The applicants' challenge of the Policy amendments based on this case is unfortunate and misdirected.

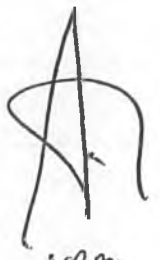
12.4 I am advised that some of the allegations made herein constitute matters that are a subject matter of continuing investigation and for that reason alone will be impermissible for me to respond to those matters.

12.5 For the purposes of this application, I am advised that the first respondent would not contest the factual correctness of the allegations made herein.



A handwritten signature in black ink, consisting of a large, stylized letter 'A' with a vertical line through it, and a small '1' to the right. Below the signature, the initials 'L. P. M.' are faintly visible.

- 12.6 The concession made in this regard is made limited only to these proceedings and only for the purposes of assisting the above Honourable Court in the adjudication of these proceedings.
- 12.7 In the very nature of these types of cases, the applicants make statements concerning a whole host of people whose confirmatory affidavits have not been obtained and filed in these proceedings.
- 12.8 I must emphasise that the call on whether there is a *prima facie* case in this case still rests with me. Again, I have not made any decision in this regard that may merit the attack which the applicants are making in these proceedings.
- 12.9 I deny that perpetrators of the crime set out herein or any other crimes will evade justice where I have sufficient information to prosecute regard being had to the prosecution policy including the challenged Policy amendments.



13. AD PARAGRAPHS 30, 31 AND 32

13.1 I note the allegations made herein.

13.2 I deny that any of the applicants have basis in law to launch these proceedings or to any of the relief sought in the Notice of Motion.

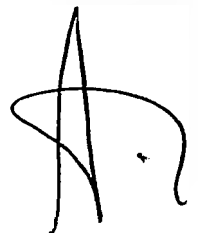
14. AD PARAGRAPHS 33 TO 35

14.1 I admit the allegations made herein.

14.2 I confirm that the Prosecution Policy has indeed been adopted as provided for in section 179(5)(a) and (b) of the Constitution, read with ss21(1) and (2) of the NPA Act.

15. AD PARAGRAPH 36

15.1 I admit the allegations made herein.



15.2 More importantly, I point out that the Policy amendments were a product of a broad and intense consultation process with the help of a broad spectrum of entities including academic institutions and community organisations.

16. AD PARAGRAPHS 37 AND 38

16.1 I admit the contents of annexures "TN26" and "TN27".

17. AD PARAGRAPH 39

17.1 I admit the allegations made relevant to appendix "A" and Part B and C of the Policy amendments insofar as they have been correctly quoted.

17.2 The Priority Crimes Litigation Unit ("PCLU") is only responsible for overseeing investigations and instituting prosecutions. The institution of these prosecutions is only possible after I make the decision to prosecute.



17.3 The PCLU, as well as the information by various Intelligence Agencies are instruments that are aimed at facilitating my decision whether to prosecute or not.

17.4 The proper reading of Part B of the prosecution policy clearly shows that the decision that I make to prosecute or not to prosecute comes after the input by the PCLU and other state departments.

18. AD PARAGRAPHS 40 AND 41

18.1 I deny the contention made herein.

18.2 The only reference to indemnity from prosecution in the amended policy document is within the context of section 204 of the CPA.

18.3 I reiterate that whether or not any particular individual will receive indemnity from prosecution will depend on the decision to be made by the trial court and not myself or the NPA.



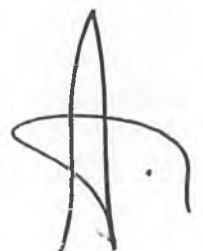
18.4 I emphatically deny that there would be indemnity from prosecution despite there being sufficient evidence to charge a perpetrator or where a conviction can otherwise be obtained and where the victim is in favour of prosecution, and where such perpetrator has not applied or was not granted amnesty at the TRC.

19. AD PARAGRAPHS 42 AND 43

19.1 I deny the allegations made herein.

19.2 I have already dealt with the reasons why the contentions made herein are, as a matter of law and fact, incorrect.

19.3 I reiterate the legal contentions made in this regard why the Policy amendments are free from any Constitutional distress.



20. AD PARAGRAPHS 44 TO 46

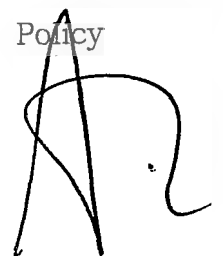
20.1 I deny the allegations made herein.

20.2 I am advised that it is improper for the applicants to contend that the policy documents are effectively to achieve a "re-run" of the TRC amnesty process "despite the express" wording of the document.

20.3 This assertion imputes improper motive on my part or that of my colleagues. The applicants must furnish the factual premise for this view.

20.4 I deny that the Policy amendments can be read or are intended to be a "re-run" of the amnesty process.

20.5 The applicants again do not furnish any factual information pointing to any unjust or unfair outcome to any victim through the implementation of the Policy amendments.



20.6 The applicants continue to mistake the object of the Policy amendments and the TRC processes. No amnesty is competent under the Policy amendments.

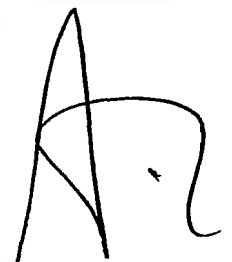
21. AD PARAGRAPH 47

21.1 I admit that the primary function of the NPA is to prosecute crime.

21.2 I admit that the NPA's purpose is not "reconciliation".

21.3 I submit that my decision to prosecute or not entails a consideration of all relevant facts including what the decision would have on the victims of those crimes.

21.4 I deny that the Policy is intended to achieve any reconciliation. If reconciliation can be obtained through prosecution, done properly within the law, then that is a consequence to be welcomed.



NRM

21.5 I deny that the Policy amendments are intended to link the interests of the perpetrators to national reconciliation “at the expense of the victims”.

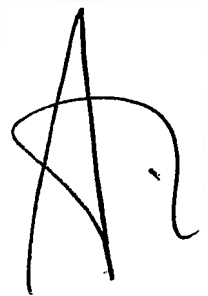
22. AD PARAGRAPHS 48 AND 49

22.1 I deny the allegations made in these paragraphs.

22.2 The amended Policy is not intended and will not be used to achieve the objects for which the TRC process was legislated and executed.

22.3 The Policy mentions in express terms that the views of the victims and others would be sought in informing the decision to prosecute or not to prosecute.

22.4 I re-emphasise that where appropriate the provisions of section 105A of the CPA will be implemented within the law.



22.5 section 105A of the CPA, if this is what is sought to be attacked, does not provide for public discourse in relation to plea bargaining. If the applicants seek to challenge the Constitutionality of this provision, then they must do so.

22.6 I maintain that there is no intention to provide for TRC amnesty under the amended Policy.

23. AD PARAGRAPHS 50 TO 53

23.1 I deny the allegations made herein.

23.2 I deny that there is any relationship between the amended Policy and the TRC amnesty processes.

23.3 I deny that the amended Policy is unlawful for reasons that are asserted herein or for any other reason.

23.4 I deny that the amended Policy will permit another bite at amnesty for those people who boycotted a negotiated Constitutional program of Truth and Reconciliation.

23.5 There was a wide consultation preceding the adoption of the amended Policy.

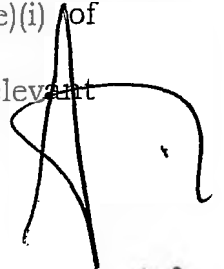
23.6 I deny that the amended Policy offers a “back door” for perpetrators of human rights violations to escape justice.

23.7 It is improper for the applicants to contend that the amended Policy makes mockery of the TRC process when in its own language the policy document states that it takes and gives due regard to that process.

24. AD PARAGRAPH 54

24.1 I deny that the amended Policy offends against the provisions of section 33 of the Constitution read with PAJA.

24.2 In particular, I deny that the amended Policy is inconsistent with the provisions of section 6(2)(e)(i) of PAJA. The NPA Act authorises me to take all relevant



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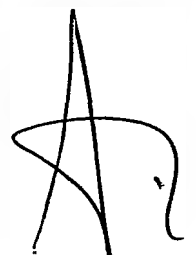
considerations in informing my decision to prosecute or not to prosecute. For instance, one of those relevant considerations is whether a person has or has not been granted amnesty by the TRC. I need to also take into account the reasons why the amnesty was not granted in respect of a particular offender. All of this information and other information is relevant.

24.3 It is impermissible to measure the amended Policy in abstract terms. The applicants must bring factual information on why any of the provisions of PAJA are offended by the amended Policy standing alone.

25. AD PARAGRAPH 55

25.1 I admit the reference to "TN28" to "TN40" insofar as they are correctly cited herein.

25.2 I have already mentioned why PAJA is not relevant in these proceedings.

A handwritten signature in black ink, appearing to be 'ARM', written in a stylized, cursive-like font.

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case Number: 32079/07

In the matter between:

THEMBISILE PHUMELELE NKADIMENG **1ST APPLICANT**

NYAMEKA GONIWE **2ND APPLICANT**

NOMBUYISELO NOLITA MHLAULI **3RD APPLICANT**

SINDISWA ELIZABETH MKHONTO **4TH APPLICANT**

NOMONDE CALATA **5TH APPLICANT**

KHULUMANI SUPPORT GROUP **6TH APPLICANT**

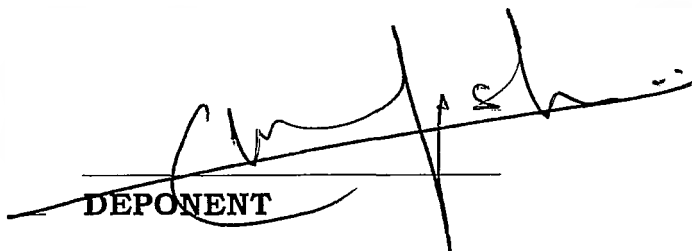
**CENTRE FOR THE STUDY OF VIOLENCE AND
RECONCILIATION (AN ASSOCIATION NOT FOR GAIN
INCORPORATED UNDER SECTION 21 OF THE
COMPANIES ACT 61 OF 1973)** **7TH APPLICANT**

**INTERNATIONAL CENTRE FOR TRANSITIONAL
JUSTICE (AN ASSOCIATION NOT FOR GAIN
INCORPORATED UNDER SECTION 21 OF THE**

25.3 I am advised that it would not be necessary to challenge condonation sought by the applicants to the extent that any condonation is necessary and relevant.


25.4 I have no personal knowledge of some of the allegations made herein and for the purposes of these proceedings do not put them in issue.

WHEREFORE I pray that it may please the above Honourable Court to dismiss the applicant's application with costs.



DEPONENT

Signed and sworn to at PRETORIA on this the 30th day of January 2008, the deponent having declared that he is familiar with the contents of this affidavit and regards the prescribed oath as binding on his conscience and has no objection to taking the prescribed oath.



COMMISSIONER OF OATHS

FULLNAMES: MTESANG RODHILLA MALETSWA

CAPACITY: CAPTAIN

123 WESTLAKE AVENUE

39 KHEVIND PARK

SILVERTON

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Case Number: 32079/07

In the matter between:

THEMBISILE PHUMELELE NKADIMENG **1ST APPLICANT**

NYAMEKA GONIWE **2ND APPLICANT**

NOMBUYISELO NOLITA MHLAULI **3RD APPLICANT**

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**CENTRE FOR THE STUDY OF VIOLENCE AND
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COMPANIES ACT 61 OF 1973)** **7TH APPLICANT**

**INTERNATIONAL CENTRE FOR TRANSITIONAL
JUSTICE (AN ASSOCIATION NOT FOR GAIN
INCORPORATED UNDER SECTION 21 OF THE**

COMPANIES ACT 61 OF 1973)

8TH APPLICANT

and

THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

1ST RESPONDENT

THE MINISTER OF JUSTICE

2ND RESPONDENT

ERIC ALEXANDER TAYLOR

3RD RESPONDENT

GERHARDUS JOHANNES LOTZ

4TH RESPONDENT

JOHAN MARTIN VAN ZYL

5TH RESPONDENT

HERMANUS BAREND DU PLESSIS

6TH RESPONDENT

WILLEM HELM COETZEE

7TH RESPONDENT

ANTON PRETORIUS

8TH RESPONDENT

FREDERICK BARNARD MONG

9TH RESPONDENT

MSEBENZI TIMOTHY RADEBE

10TH RESPONDENT

AD SUPPLEMENTARY AFFIDAVIT



NRM

I, the undersigned,

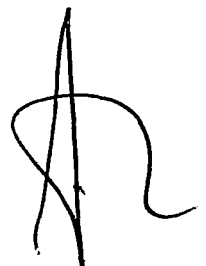
MOKOTEDI JOSEPH MPSHE

1. do hereby make oath and state that

1.1 I am a Deputy National Director of Public Prosecutions, appointed by the President of the Republic of South Africa in terms of Section 10 of the National Prosecuting Authority Act, 32 of 1998. I am currently serving as the Acting National Director of Public Prosecutions and in that capacity as the head of the office of the National Director of Public Prosecutions and the National Prosecuting Authority ("NPA"). note

1.2 The facts deposed to herein are within my personal knowledge, except where I indicate otherwise or the context indicates to the contrary, and are both true and correct. ?

1.3 Any legal submissions that I make herein are submissions that flow from legal advice that I obtained from my legal representatives and which I verily believe to be correct. note



2. I have read the affidavits of **THEMBISILE PHUMELELE NKADIMENG** (“Nkadimeng”), **ALEXANDER LIONEL BORRAINE** (“Borraine”) and **DESMOND MPIOLO TUTU** (“Tutu”).

note

AD EIGHTH APPLICANT’S CASE

Policy amendments to be declared unconstitutional and invalid

3. In the first instance the eighth applicant seek a relief that the National Prosecution Policy (“the amended policy”) be declared inconsistent with the Constitution of the Republic of South Africa

- 3.1 I aver that the adoption of the Prosecution Policy is mandated by the provisions of the Constitution.

In terms of s179(5)(a) of the Constitution, the prosecuting authority is obliged to, in the execution of its duties, inform its decision in terms of the Prosecution Policy properly determined by the National Director and with which there is concurrence by the second respondent. The second respondent has concurred to the adoption of the said Policy.



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law

3.2 The eighth applicant does not furnish full particularity relating to the policy amendments being inconsistent with the Constitution of the Republic of South Africa. For this reason, the first respondent is not able to offer an adequate answer to this challenge.

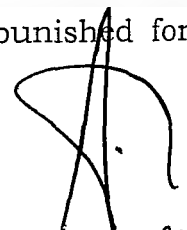
3.3 I am advised that as a matter of law, the policy amendments have been lawfully adopted as provided by the Constitution.

Re-introduce the amnesty provisions of TRC

4. The eighth applicant alleges that the policy amendments allow the NPA to effectively re-introduce the amnesty provisions of the TRC Act.

This claim by the eighth respondent is bad both in law and fact for the following reasons: *denied
by
law
and
fact*

4.1 A proper reading of the amended policy does not furnish the first respondent with the power to grant amnesty to perpetrators of gross human rights violations. To the contrary the amended policy seeks to ensure that the perpetrators are punished for



HRM

their crimes. The first respondent is not legally empowered to grant amnesty and will not grant amnesty to anyone. In support of my submission, I refer to the under-mentioned paragraphs contained in the Prosecution Policy which emphasize the essential feature of the amended policy.

Par A.1(b) provides:

“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 the rights of victims’ and would fly in the face of the objectives of the TRC process”

Par A.1(c) provides:

*“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**”.*



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Par A.1(d) provides:

*“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**”.*

4.2 The powers that were entrusted upon the TRC, I reiterate, have not been transferred to the first respondent as alleged by the applicants.

not alleged

4.3 To the contrary, the first respondent is entrusted with a duty to prosecute by the Constitution and the National Prosecuting Authority Act 32 of 1998. The amended prosecution policy is aimed at the prosecution of crime and punishing of perpetrators of any crime where a conviction is obtained before a court of law.

adm.

duty

4.4 It is important to note that the policy amendments of the NPA in no way are specifically aimed at the TRC process and/or victims of crimes arising from conflicts of the past, but are of general application for effective and appropriate prosecution of crimes in the Republic.

duty



NRM

4.5 Finally, it is important to note that the granting of amnesty in terms of the TRC process indemnifies a person from prosecution or civil action, whereas a decision by the National Director not to institute criminal proceedings does not prevent a victim or interested person from instituting private prosecution or civil action.

actur.

Perpetrators may escape justice

5. The eighth respondent argues that as a result of the policy amendments perpetrators of gross human rights violations may escape justice even though they refused to participate in the TRC process or were refused amnesty for their failure to comply with one or more of the requirements for amnesty, for example, failure to make full disclosure. This argument by the eighth applicant is unfortunate and misplaced.

5.1 The amended policy is aimed at providing a guide and ensuring that crime is prosecuted. The prosecution of crime is precisely aimed at punishing perpetrators of any crime where a conviction is obtained in a court of law.



NRM

5.2 It is difficult to understand why the eighth applicant would argue that as a result of the policy amendments perpetrators of gross human rights violations may escape justice even though they refused to participate in the TRC process.

5.3 No evidence and/or information is furnished by the eighth applicant why it is contended that the policy amendments may furnish perpetrators of gross human rights to escape justice despite their failure to take part in the TRC process.

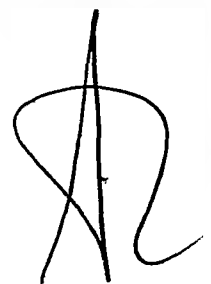
THE GROUNDS OF ATTACK

6. The eighth applicant has made multiple attacks to the policy amendments. I hereby deal with each attack.

The extension of rights of perpetrators

7. The eighth applicant submits that there is nothing in the constitutional and statutory design of the TRC process which contemplated the extension of the rights of perpetrators to amnesty or indemnity from prosecution.

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7.1 The reading of the policy amendments does not purport to offer an extension of the rights of the perpetrators to amnesty or indemnity from prosecution. To the contrary, the policy amendments are aimed at achieving the opposite.

7.2 The first respondent has a constitutional mandate, on behalf of the Government, to bring to justice any and all offenders where evidence is available. As previously provided, the object is ultimately that justice is served.

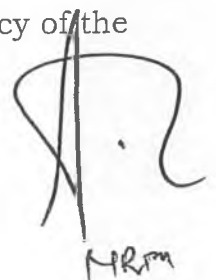
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Further amnesty opportunity

8. The eighth applicant argues that an examination of the postscript to the Constitution of the Republic of South Africa Act 200 of 1993 ("the Interim Constitution") reveals no direct or inferred suggestion that the TRC process would open the door to further opportunities for perpetrators to escape justice outside of the TRC's amnesty provisions. This argument by the eighth applicant is wrong for the following reasons:

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8.1 The amended policy makes no provision for the granting of amnesty and/or indemnity to perpetrators of gross human rights. No mention is further made in the amended policy of the



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fact that the first respondent possesses the power to grant amnesty.

8.2 The policy amendments are not a process in terms of which individuals are to receive any amnesty. The TRC was a specific legislative process that authorised amnesty subject to the conditions and terms of that legislation.

8.3 In the circumstances, I submit that the amended policy is rational and its object is to discharge the duties of the first respondent under the law.

8.4 I categorically deny that policy amendments are intended to offer any extension of the TRC amnesty processes or to offer a further opportunity for the perpetrators of human rights violations to escape justice.

Pact with victims

9. The eighth applicant contends that the TRC as encapsulated in the postscript to the Interim Constitution and the Act required the sacrifice of the fundamental rights of the victims in order to advance



NRM

national unity and reconciliation. In so doing the State entered into a compact with victims. This argument by the eighth applicant is wrong.

9.1 I submit that the policy amendments were triggered, in part, by an appreciation that there are certain individuals who, having ^{Note} undergone the TRC process, did not receive amnesty for one or other reason. In the main, the TRC had considered that the ^{Adm?} individuals did not meet the requirements of full disclosure to qualify for amnesty.

9.2 There have been cases dealing with crimes arising from conflicts of the past which have been prosecuted by our courts, and a ^{Don't know} number of such cases are still to be prosecuted. To conclude that the State has done very little to prosecute such matters is a misguided conclusion.

9.3 However it must be accepted that the prosecution of gross human rights violations is a difficult and complex matter. Not only were those offences committed by sophisticated individuals with wide ranging political objectives through clandestine



new member
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methods, it becomes necessary at times, for the successful prosecution of these offences, to enter into agreements with individuals who are able to help secure convictions in this regard.

9.4 The policy amendments seek to achieve the very objective which is the prosecution of perpetrators of human rights violations which arose from conflicts of the past.

The amended prosecution policy

10. The eighth applicant argues that the amended policy is an unfortunate departure from South Africa's ground breaking truth and reconciliation process. That the introduction to the amended policy points out that the policy does not perpetuate the TRC's amnesty regime. The applicant further argues that the amended policy has the very same effect. This interpretation by the eighth applicant is unfortunate and inaccurate.

10.1 A proper reading of the introduction to the amended policy clearly indicates the purpose for which the amended policy was adopted. The policy amendments were not adopted with the

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methods, it becomes necessary at times, for the successful prosecution of these offences, to enter into agreements with individuals who are able to help secure convictions in this regard.

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NRM

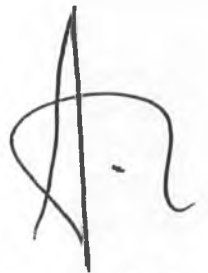
intention to perpetuate the TRC process. A decision not to prosecute does not amount to a granting of amnesty or indemnity. The victims retain their right to institute private prosecutions and/or civil proceedings

10.2 The eighth applicant fails to attack a *nolle prosequi* with the same venom with which he challenges a decision not to prosecute in terms of the policy amendments. A *nolle prosequi* is a well entrenched and tried principle of law which has stood the test of time

Decided with

Hearings behind closed doors

11. The eighth applicant argues that, unlike the amnesty regime under the TRC which provides for open hearings, the part B procedure contained in the amended policy will be carried behind closed doors. The NDPP is not required to publicize an application made by perpetrators in terms of the amended policy, which means that interested parties will be unaware that the application has been made.



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11.1 A proper reading of part B of the policy amendment dictates contrary to the eighth applicant's argument. In terms of part B, the procedural arrangements provided therein, **must strictly** be adhered to. (*my emphasis*)

Par B.10 provides as follows:

"A decision of the NDPP not to prosecute and the reasons for that decision must be made public".

Par B.12 provides as follows:

"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".

Par B.13 provides:

"The institution of any prosecution in terms of this policy relating to conflicts of the past would not deprive the accused from making 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".

11.2 There is a duty on the part of the State to ensure that the process is transparent and further that the victims are duly informed of the process. There is no reason why the policy amendments would not be implemented contrary to its terms.

Erodes the human rights culture

12. The eighth applicant argues that the policy amendment seriously erodes the human rights culture established by the Constitution;

12.1 The eighth applicant has not furnished any evidence or information on why he contends that the policy amendment erodes the human rights culture established by the Constitution.

Conclusion



NRM

12.2 The respondents are left to guess why this contention is made. This approach to constitutional litigation has been consistently deprecated by our courts.

Does not make special provision for victims

13. The eighth applicant argues that the policy amendment does not make any special provision for victims. Victims under the TRC Act were afforded certain benefits such as the ability to participate in hearings, receive counselling services and be awarded reparations.

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13.1 The Policy amendments enjoin the first respondent to attach due weight to the human rights culture which the Constitution requires and fosters.

It will be submitted that the policy amendment was adopted as a guide to prosecutors. The amended policy and the general policy seek to protect and address the victim's rights. The objective of the policy amendment is to ensure that perpetrators of gross human rights violations are prosecuted and convicted



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where there is sufficient evidence to so convict, by a competent court of law.

13.1.1 Par 3, second paragraph of the general policy, at page A.4 provides:

“In this capacity, they should ensure that the interests of victims and witnesses are promoted, without negating their obligation to act in a balanced manner”.

13.1.2 Par 3(a), second paragraph, general policy at page 5 provides:

“The decision whether or not to prosecute must be taken with care, because it may have profound consequences for victims, witnesses, accused persons and their families. A wrong decision may also undermine the community’s confidence in the prosecution system and the criminal justice system as a whole”.



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13.2 As a guide, the policy amendments focus on performance by prosecutors on their lawful obligations in terms of NPA Act.

13.3 The policy amendments were not adopted with a view to perpetuate the TRC process. The TRC was established with its own terms of reference different from the objectives of the prosecution policy amendments.

Undermines the recommendations of TRC

14. The eighth applicant argues that the policy amendment undermines the recommendation by the TRC that the NPA should prosecute those who failed to apply for amnesty or who were refused amnesty. This argument is misdirected.

14.1 I do not understand what the eighth applicant means when he says that the implementation of the policy amendment undermines the recommendations of the TRC.

Par 2(a) of the general policy at page A.14 provides:

In view of the above, Prosecuting policy, Directives and guidelines are required to reflect and attach due weight to the following:

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Suzanne*

[Signature]
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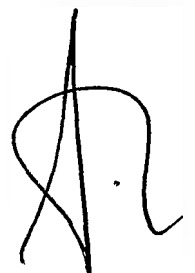
- (a) *The Human Rights culture which underscores the Constitution and the status accorded to victims in terms of the TRC and other Legislation.*

14.2 It must be appreciated that the purpose of the amended policy is indeed to ensure that the objects for which the Interim Constitution authorised the reconciliation process through the TRC process as well as the legislation implementing the TRC process, should not be undermined.

14.3 The purpose of the amended policy is to restate and to further the constitutionally authorised objective of the NPA.

Interferes with NDPP

15. The eighth applicant argues that the policy amendment interferes with the ability of the NDPP to uphold and protect the Constitution and the fundamental rights entrenched therein;



15.1 This attack by the eighth applicant is without merit. In terms of S179 (5) (a) and (b) of the Constitution, the NDPP is entrusted with the duty to determine and adopt a prosecution policy in concurrence with the Minister and after consultation with the Directors.

15.2 It is submitted that the NDPP was responsible for the adoption of the prosecution policy as per the provisions of the Constitution. The amended policy was adopted as an aid in the performance by the NDPP of his duties. To hold that the amended policy interferes with the NDPP's ability to uphold and protect the Constitution does not make sense.

Authorises NDPP to violate rights of victims

16. Eighth applicant argues that the policy amendments authorises the NDPP to violate the fundamental rights of victims of crime.

16.1 The very purpose of the policy amendments is the protection of the rights of the victims of crime, through the prosecution of the perpetrators of the human rights.



NRM

16.2 The policy amendments were adopted in order to uphold and enforce the human rights entrenched in the Constitution, in particular the rights of the victims of the conflicts of the past.

Rewards the perpetrators

17. The eighth applicant argues that the policy amendment rewards perpetrators with a decision not to prosecute without any obligation to publicly acknowledge their wrongdoing and perform community service or reparation.

17.1 I deny that the policy amendments have an impact of rewarding the perpetrators with a decision not to prosecute.

17.2 The eighth applicant has not offered the factual basis on which his contentions in this regard rest. For that reason, I am unable to provide a complete answer to the challenge.

done



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17.3 I reiterate that, the policy amendments, properly construed, cannot bear the meaning that the eighth applicant is contending for.

17.4 I now turn to deal with each and every allegation in the eighth applicant's papers.

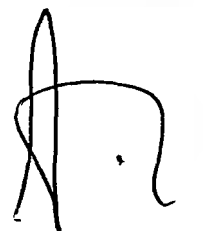
18. AD PARAGRAPHS 1, 2, 3, 4 AND 5

18.1 Save to deny that the contentions made in these Paragraphs are true and correct; the remainder of the allegations made herein are noted.

19. AD PARAGRAPH 6

19.1 I deny the allegations made in these paragraphs.

19.2 I deny that the eighth applicant is entitled to any relief claimed in these proceedings



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19.3 I further deny that the policy amendments are inconsistent with the Constitution. I reiterate that the policy amendments have a constitutional rational basis and can survive any constitutional scrutiny

19.4 I am advised that the eighth applicant is obliged in law to give concrete factual information that predicates their constitutional attack if for no other reason than to afford the respondents the opportunity to answer fully to the challenge and the court to bring a correct adjudication on that challenge.

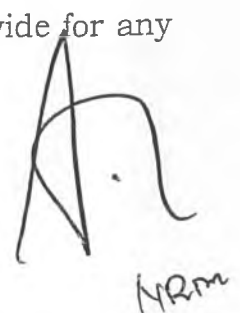
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20. AD PARAGRAPH 7, 8 AND 9

20.1 I deny the allegations contained in this paragraph.

20.2 I particularly refute the allegation that the policy amendments allow the National Prosecution Authority ("NPA") to reintroduce the amnesty provisions of the TRC.

20.3 I emphatically deny that the policy amendments provide for any amnesty.



A handwritten signature, possibly 'A. M.', with the initials 'NRM' written below it.

20.4 Under appropriate circumstances, the first respondent would conclude agreements contemplated in s105A of the Criminal Procedure Act.

Agreed with

20.5 Under appropriate circumstances, a competent court, may offer indemnity against prosecution. A decision independently made by the court and not the first respondent.

20.6 I deny that perpetrators of crimes set out herein or any other crime will escape justice where I have sufficient information to prosecute regard being had to the prosecution policy including the challenged policy amendments.

21. AD PARAGRAPH 10 TO 18

21.1 The allegations contained in these paragraphs are noted.

21.2 I deny that there is a relationship between the amended policy and the TRC amnesty process.

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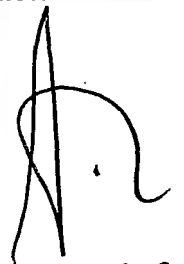
21.3 I do not contest the factual correctness of the allegations made herein.

22. AD PARAGRAPH 19 TO 22

22.1 I note the allegations contained in these paragraphs.

22.2 I wish to reiterate that the policy amendments were triggered, in part, by an appreciation that there are certain individuals who, having underwent the TRC process, did not receive amnesty for one or other reason. The TRC had considered that the individuals did not meet the requirements of full disclosure to qualify for amnesty or a category of offenders whose crimes were outside the time frames in the TRC Act.

22.3 There were also individuals who did not go through the TRC process and in respect of whom there would be evidence implicating them in the commission of gross human rights violations. This category of individuals was to be dealt with under the amended prosecution policy.


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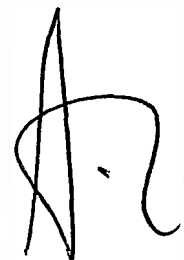
22.4 It must therefore be appreciated that the purpose of the amended policy is indeed to ensure that the objects for which the Interim Constitution authorised the reconciliation process through the TRC process as well as the legislation implementing the TRC process, including the recommendations of the TRC are not undermined.

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23. AD PARAGRAPH 23 TO 26

23.1 I deny the allegations contained in these paragraphs.

23.2 I am advised that the prosecution of violations of gross human rights is a complex matter. Not only were these offences perpetrated by sophisticated individuals with wide ranging political objectives through clandestine methods; it becomes necessary, for the successful prosecutions of these offences, to enter into agreements with individuals who are able to help secure convictions in this regard.



23.3 The nature of the agreements that the first respondent would conclude with such people as may offer assistance in the prosecution of these offences would be through s204 of the Criminal Procedure Act, 51 of 1977.

Jeny

23.4 The policy amendments correctly provide that they are not intended to be a process that can become a continuation of the amnesty process of the TRC. For this reason, no amnesty would be granted by the first respondent.

24. AD PARAGRAPH 27

24.1 I deny the allegations herein contained.

24.2 I am advised that it is improper for the eighth applicant to contend that the policy amendments are effectively to achieve a "re-run" of the amnesty process "despite the express" wording of the document.

NRM

24.3 This assertion imputes improper motive on my part or that of my colleagues. The eighth applicant must furnish the factual premise for this view.

Done with

24.4 I specifically deny that the policy amendments can be read or are intended to be a “re-run” of the amnesty process.

24.5 The eighth applicant does not furnish any factual information pointing to any unjust or unfair outcome to any victim through the implementation of the policy amendments.

Done with

24.6 The applicants continue to mistake the object of the policy amendments and the TRC processes. No amnesty is competent under the policy amendment.

25. AD PARAGRAPH 28

25.1 I deny the allegations contained in this paragraph.

[Signature]
NRm

25.2 The amended policy is not intended and will not be used to achieve the objects for which the TRC process was legislated and executed.

25.3 The policy mentions in express terms that the views of the victims and others would be sought in informing the decision to prosecute or not to prosecute.

26. AD PARAGRAPH 29

26.1 I deny the allegations contained in this paragraph.

26.1.1 The eighth applicant has not furnished any evidence or information on why he contends that the policy amendment erodes the human rights culture established by the Constitution.

Admitted

26.1.2 The respondents are left to guess why this contention is made. This approach to constitutional litigation has been consistently deprecated by our courts.


NRM

26.2 The allegations herein contained are denied.

26.2.1 It will be submitted that the policy amendments were adopted as a guide to prosecutors. The objective of the policy amendment is to ensure that perpetrators of gross human rights violations are prosecuted and convicted where there is sufficient evidence to so convict, by a competent court of law.

26.2.2 As a guide, the policy amendments focus on performance by prosecutors on their lawful obligations in terms of NPA Act.

26.3 The allegations herein contained are denied.

26.3.1 It will be submitted that the purpose of the amended policy is to ensure that the objects for which the Interim Constitution authorised the reconciliation process through the TRC process as well as the legislation implementing the TRC process, **should** not be undermined.



NRM

26.4 The allegations contained in this subparagraph are denied.

26.4.1 It will be submitted that the attack by the eighth applicant is without merit. In terms of s179 (5) (a) and (b) of the Constitution, the NDPP is entrusted with the duty to determine and adopt a prosecution policy in concurrence with the Minister and after consultation with the Directors.

26.4.2 It is submitted that the NDPP was responsible for the adoption of the prosecution policy as per the provisions of the Constitution. The amended policy was adopted as an aid in the performance by the NDPP of his duties. To hold that the amended policy interferes with the NDPP's ability to uphold and protect the Constitution does not make sense.

26.5 The allegations contained herein are denied.



A handwritten signature, possibly 'A. N. M.', with the initials 'NRM' written below it.

26.5.1 It will be submitted that the very purpose of the policy amendments is the protection of the rights of the victims of crime, through the prosecution of the perpetrators of the human rights.

26.5.2 The policy amendments were adopted in order to uphold and enforce the human rights entrenched in the Constitution, in particular the rights of the victims of the conflicts of the past.

26.6 The allegations contained herein are denied.

26.6.1 I deny that the policy amendments have an impact of rewarding the perpetrators with a decision not to prosecute.

26.6.2 The eighth applicant has not offered the factual basis on which his contentions in this regard rest. For that reason, I am unable to provide a complete answer to the challenge.

See
out


NRm

26.6.3 I reiterate that, the policy amendments, properly construed, cannot bear the meaning that the eighth applicant is contending for.

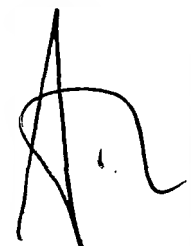
27. AD PARAGRAPH 30 AND 33

27.1 The allegations contained in this paragraph are denied.

27.2 I further deny that the policy amendments include a degree of remorse and attitude towards reconciliation as another criterion upon which not to prosecute a perpetrator. I submit that the policy amendment concerns the prosecution of offenders for the violation of human rights and not the sentencing of such offenders. The issue of remorse is a matter to be considered by the court.

27.3 I specifically deny that the policy amendment affords perpetrators every last avenue to escape justice.

28. AD PARAGRAPH 34 TO 36



NRM

28.1 I deny the allegations made herein.

28.2 I deny that the policy amendments can be considered or have an impact of undermining the constitutional compact that the South African society made with the victims of human rights violations.

no
of
compact

28.3 It will be submitted that the purpose of the amended policy is to ensure that the objects for which the Interim Constitution authorised the reconciliation process through the TRC process, as well as the legislation implementing the TRC process should not be undermined. The contention by the eighth applicant is therefore without merit.

29. AD PARAGRAPH 37

29.1 I deny the allegations made in this paragraph.

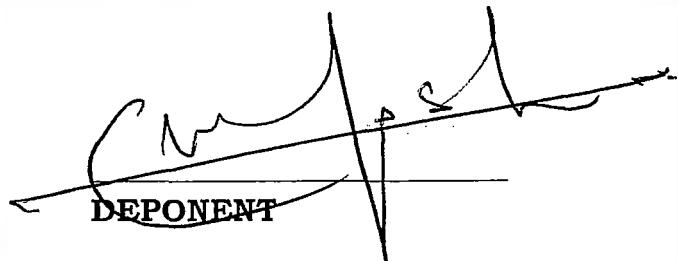


ARM

29.2 I reiterate that the policy amendment has been lawfully adopted as provided by the Constitution and the law.

29.3 I specifically deny that the policy amendments infringe any constitutional rights or offend against any principle of the rule of law.

WHEREFORE I pray that it may please the above Honourable Court to dismiss the applicant's application with costs.



DEPONENT

Signed and sworn to at PRETORIA on this the 30th day of January 2008, the deponent having declared that he is familiar with the contents of this affidavit and regards the prescribed oath as binding on his conscience and has no objection to taking the prescribed oath.



COMMISSIONER OF OATHS

FULLNAMES: NYESANG RODNICCA MALETSEWA

CAPACITY: CAPTAIN

123 WESTLAKE AVENUE
WEAVER PARK
SILVERTON
30
PRETORIA

**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 Mfundo Salukazana (for Adv M Mpshe)
Adv Nwabisa Ntshizana (for Adv M Mpshe)
Adv Bridgette Nthambeleni (for Adv Jiba)
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv KD Moroka (SC) – DoJ representative
Adv Tlotlego Tsagae (DoJ representative)
Adv Motlalepule Rantho (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Ms A Thakor – The Calata Group
Mr Siphon Tlhaole – The Calata Group
Adv Gwala (SC) – NPA representative

7 APRIL 2026

DAY 28

PAGES 1 – 67



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PROCEEDINGS ON 7 APRIL 2026

CHAIRPERSON: Good morning to you all. Today we are to hear the evidence of Adv Mpshe. Mr Semenya?

ADV SEMENYA: If the witness can be sworn in and I think my learned colleague can proceed.

CHAIRPERSON: Mr Salukazana, are you going to lead your witness?

ADV SALUKAZANA: That is correct, Chairperson.

10 CHAIRPERSON: Thank you. Adv Mpshe, are you going to take an oath or affirmation?

ADV MPSHE: Oath, Chairperson.

CHAIRPERSON: Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth, if so, raise your right hand and say, so help me God.

ADV MPSHE: So help me God.

MOKOTEDI MPSHE: duly sworn statement

CHAIRPERSON: Thank you. Mr Salukazana?

ADV SALUKAZANA: Thank you, Chairperson.

EXAMINATION BY ADV SALUKAZANA: Good morning, Mr Mpshe.

20 ADV MPSHE: Good morning, sir.

ADV SALUKAZANA: Do you have before you a bundle of documents with two titles? The first, at the top of list and ...[indistinct] lines, is index statements for 06 April to 10 April 2026. Do you have that?

ADV MPSHE: Yes, I do.

ADV SALUKAZANA: Thank you. And then at page 1649.

CHAIRPERSON: Page?

ADV SALUKAZANA: It is 1649, Chairperson, and in the index it is item 1. I think it was extracted from ...[intervenes]

ADV MPSHE: I have it.

ADV SALUKAZANA: Thank you very much. Are you familiar with that document?

ADV MPSHE: Yes, I am.

ADV SALUKAZANA: Is that your statement that you submitted
10 before the commission?

ADV MPSHE: Indeed.

ADV SALUKAZANA: Have you read the document and confirmed that it is correct and binding on your conscience?

ADV MPSHE: Correctly so.

ADV SALUKAZANA: Thank you very much. May we start then with the introduction, and that sets out your background. Could you briefly go through paragraphs 1 to 7, just setting out your background as a legal practitioner and your involvement in the TRC, and then go into your involvement into the NPA?

20 ADV MPSHE: I am at the introduction.

"Introduction

1 I am an adult male South African and an Advocate of the High Court of South Africa after having been admitted on 29 January 1992. I am a member of the Pretoria Society of Advocates."

ADV SALUKAZANA: Thank you.

COMMISSIONER KGOMO: Is it 1992 or 1991?

ADV SALUKAZANA: That is the correction I was going to make, Commissioner.

COMMISSIONER KGOMO: Oh, okay.

ADV SALUKAZANA: The correct year is 1992, not 1991.

ADV MPSHE: Oh, yes. Okay. Thank you.

ADV SALUKAZANA: Thank you, Mr Mpshe, you can carry on.

ADV MPSHE:

10 "2 In 1998, I joined the National Prosecuting Authority ("NPA") as a Director of Public Prosecutions in the KwaZulu-Natal ("KZN") Province.

3 At this time, I was attached to the Truth and Reconciliation Commission ("TRC") as Chief Evidence Leader, handled TRC amnesty cases, and scheduled all Amnesty Committee hearings.

20 4 In April 2002, I was transferred to the office of the Director of Public Prosecutions ("DPP") in Pretoria where I remained until May 2006.

5 In May 2006, I was appointed to the position of Deputy National Director of Public Prosecutions ("DNDPP") and was responsible for the National Prosecution Services ("NPS").

6 While I held the position of DNDPP, I served

as the Acting National Director of Public Prosecutions ("Acting NDPP") from 23 September 2007 to 30 November 2009, and I took early retirement from the NPA during or about February 2010. My appointment as ANDPP was pursuant to the suspension of Adv Vusi Pikoli as NDPP on the same date."

ADV SALUKAZANA: Thank you very much. You are aware that you are before this commission in terms of a notice that was issued in
10 terms of Rule 3.3 of the Rules of the Commission?

ADV MPSHE: Indeed so.

ADV SALUKAZANA: And from that notice, what do you understand the reason for you being here to be?

ADV MPSHE: Yeah, I understand the reason for me, Mpshe, is that there are allegations levelled against me that I have conducted myself in the manner in which was, how can I put it, a suppression of TRC cases, and that I am the person who let go of Adv Ackermann from handling the TRC cases. That is my understanding.

ADV SALUKAZANA: Certainly. Thank you very much. So then, in
20 having considered the, at least so-called implicating statements made against you, what is your general response to one, you relieving Mr Ackermann, as soon as you started acting and your role insofar as there was no activity whilst you were the acting NDPP in relation to the TRC cases?

ADV MPSHE: Yeah. My response to the issue of Adv Ackermann is

that the allegation is not correct or it is untrue, let me put it that way. In the sense that I did not release him of TRC cases immediately, as you say, immediately after my appointment in 2007. That happened later on, I think in 2009, speaking under correction. So it is incorrect that I did that immediately after my appointment.

COMMISSIONER KGOMO: Yes, Mr Mpshe, it means that you are at around paragraph 28. Is that so? The allegation that I relieved Adv Ackermann of his duties in relation to the TRC, which is at page 1655. Is this where we are?

10 ADV SALUKAZANA: Commissioner, what I was doing was to telescope what it is that is going to be said. We are still going to refer to the particular paragraphs, but it was just a general response telescoping where it is we are going and so far as the implicating statements have been made about Mr Mpshe.

COMMISSIONER KGOMO: Okay.

ADV MPSHE: And the other allegation that I might have suppressed or stopped the further attention from the TRC cases and that it was a political action on my part, I say that is also not correct because that never happened at all. I never suppressed, nor stopped, nor even
20 interfered with the TRC cases.

ADV SALUKAZANA: Thank you, Mr Mpshe. In your statement, you had asked that you want to highlight that you played a role in the TRC itself and that starts at paragraph 9 of your statement. Could you read that into the record, please?

ADV MPSHE: Thank you.

"9 Before joining the TRC, I practiced as a junior counsel in Pretoria. I was then approached by Mr Dumisa Ntsebeza, who informed me that the late Archbishop Desmond Tutu wished to meet with me. Mr Ntsebeza was at the time the head of TRC investigations, if my memory serves me well."

ADV SALUKAZANA: Certainly. How did you know Mr Ntsebeza?

ADV MPSHE: I knew Mr Ntsebeza as a result of our interaction
10 during, can I say, the activism period. I knew him there from, we had meetings now and then on the basis of activism. That is how I knew him.

ADV SALUKAZANA: And in what context was he approaching you?

ADV MPSHE: In what context?

ADV SALUKAZANA: Certainly. When he approached you, did you know that the approach was coming? Had you discussed it with him before?

ADV MPSHE: No, not at all, not at all. All what he said to me, because it was telephonic, he just said, we are going to get you to
20 come to Cape Town. It was on a Friday, I remember. The Archbishop would like to meet with you and that was it, and then the next thing was that we have arranged the plane for you to fly down to Cape Town the same day on a Friday, I remember.

ADV SALUKAZANA: Certainly. And then you went to Cape Town and at paragraph 11 you indicate that you commenced serving on the

amnesty committee on or about October 97. Did you leave practice or were you practicing both at the bar and at the ...[intervenes]?

ADV MPSHE: The arrangement was that my going to the TRC, it was like a brief to me, a brief to the practice, so I did not leave practice.

ADV SALUKAZANA: Certainly. And then you state in the next topic that whilst you were at the TRC you were appointed as the Director of Public Prosecutions in KZN. Could you give us or elaborate on that, on how it happened, looking specifically at 12, 13, 14?

10 ADV MPSHE: Thank you.

"12 While at the TRC, I was approached by the then Minister of Justice, Dullah Omar, and informed that my services were required as the Director of Public Prosecutions ("DPP") for the Province of KwaZulu-Natal ("KZN")."

ADV SALUKAZANA: What was your role?

ADV MPSHE: This is when I was at the TRC and I did have the meeting with the Minister Dullah Omar in his office in Cape Town in Parliament. The meeting started at 2 o'clock, I do not remember the
20 date, and then when I met with him in his office then he said to me, people have been talking to me that I must approach you and request you to go and take over the position of DPP in KZN.

And I recall my response to him was that, Mr Minister, I am still attached to the TRC and there is still a lot of work to be done. And then he said to me, your two ICs can take over, you will be

allowed to go once or twice a month to go and check on the work.

And that was the end of our discussion.

ADV SALUKAZANA: Did you accept the position as a DPP in KZN?

ADV MPSHE: I did accept that position as a DPP in KZN.

ADV SALUKAZANA: And whilst you were there, what were you responsible for, what was your role?

ADV MPSHE: As a DPP in the province, you are in charge of criminal prosecutions. In that province, you are to guide and direct whatever prosecutions are to take place and you become the head of prosecutions in the province.

10

ADV SALUKAZANA: And whilst you were there, did you ever come across any TRC matters or TRC related matters?

ADV MPSHE: No, I did not. I did not at all.

ADV SALUKAZANA: Was that because there were none that related to the KZN office of the NPA? Or because they were handled by a different office? Do you know why you did not come across that?

ADV MPSHE: Yeah. There were a lot of TRC matters that emanated from KZN, a lot of them, because I dealt with them, but we did not attend to them in the provinces, because there was a unit that was established at head office, the PCLU that was dealing strictly with those matters at head office.

20

ADV SALUKAZANA: Certainly. And then at paragraph 16 of the statement, could you please read that for us?

ADV MPSHE: Yeah.

"16 I was then transferred to serve as the DPP

in Pretoria from April 2002 until May 2006."

ADV SALUKAZANA: And you go into your role as DNPP, could you, for the sake of context, expand on that if you wish to?

ADV MPSHE: Okay. On paragraph 17?

ADV SALUKAZANA: 17, that is correct.

ADV MPSHE: Yeah.

10 "17 In May 2006, I was appointed to the position of Deputy National Director of Public Prosecutions ("DNDPP"). In this position, I was responsible for the National Prosecution Service ("NPS") and was based at the Head Office in Pretoria."

ADV SALUKAZANA: And then 18.

ADV MPSHE: Okay.

"18 My role as Head of the NPS involved taking charge of prosecutions in the country, managing all the DPPs who reported to me in all provinces. I reported to the NDPP about matters pertaining to prosecutions."

20 ADV SALUKAZANA: When you say 'taking charge of prosecutions in the country', did that include TRC cases?

ADV MPSHE: No, no, no, no. It does not include TRC cases, because, like I said, the TRC cases were handled by PCLU. These are the people who are dealing with that, only at head office and there was a head who was appointed by the president, I think it was

President Mbeki then, yes. There was a head who was appointed by proclamation, Adv Anton Ackermann. So in the provinces, we were not dealing with the TRC cases, unless when specifically, the PCLU would find that the prosecution of this matter should take place in KZN or in North West. Then that case would then be dealt with in that province.

ADV SALUKAZANA: Did that ever happen where cases were referred to by the PCLU in matters that involved you?

ADV MPSHE: I remember one that was dealt with in Pretoria. It was
10 dealt with by Anton Ackermann and others that I may not remember, but there are some that were referred to the provinces by PCLU, but the difference was that they would not be dealt with in those provinces by the prosecutors in those provinces. The prosecutor from PCLU would travel to go into that case there.

ADV SALUKAZANA: So it would be correct then to sum up what you have said as saying that whilst you were DPP in Pretoria, you were not involved at all in TRC matters?

ADV MPSHE: Not at all. Not at all.

ADV SALUKAZANA: Thank you. And then we will move on to your
20 appointment as the acting NDPP. And we will start first with paragraph 20, which is at page 1652.

ADV MPSHE: Yeah.

"20 I served as the DNDPP until 23 September 2007, when I was appointed as the Acting NDPP.

This was upon the suspension of Advocate Vusi

Pikoli as NDPP."

ADV SALUKAZANA: And then at paragraph 21.

ADV MPSHE:

"21 During my tenure as Acting NDPP, I engaged from time to time with the following persons and structures whose relevance appears later in this statement.

10 21.1 Senior officials within the Justice, Crime Prevention and Security Cabinet coordination structures ("the JCPS Cluster"), through which the NPA, SAPS, and the Department of Justice and Constitutional Development ("the Department of JCD") ordinarily interfaced on operational matters requiring interdepartmental coordination.

21.2 Mr Simelane, who then served as the Director General of the Department of Justice and Constitutional Development (from around June 2005 to about September 2009).

20 21.3 The interdepartmental task team ("the ITT" or "the Task Team") which was established to facilitate coordination between SAPS and the NPA in relation to TRC-related investigations and prosecutions.

21.4 The Minister of Justice and Constitutional Development."

ADV SALUKAZANA: Can we go back to your interactions with the Director General, Mr Simelane? What was the extent of the interaction and what about?

ADV MPSHE: Mr Simelane was one of the members in the JCPS cluster. Now, because he was the Director General of the Department of Justice, whereat we reported as the NPA, I had quite a number of interactions on matters pertaining to TRC. For example, if there is a TRC prosecution that was taking place, he was entitled to a report thereon for him to forward the same to the Minister of Justice.

10 ADV SALUKAZANA: But his engagements, were they ever about decisions taken about whether to prosecute or not?

ADV MPSHE: Not at all, not at all. That was the domain of the NDPP.

ADV SALUKAZANA: Certainly. And then you speak about the Interdepartmental Task Team. What was that and when was it established?

ADV MPSHE: I cannot remember the date when it was established, but it was a task team consisting of Directors General and other members from various departments. The departments that fell within
20 the Justice cluster. So the Director Generals would meet and discuss matters there, including the TRC matters and those meetings were attended only by the National Director.

ADV SALUKAZANA: Certainly. So what was your involvement as the National Director in issues being discussed by DGs?

ADV MPSHE: The involvement was just to inform them as to where

the TRC matters are and maybe even seek guidance and maybe even get directives from them as to how to proceed with the matters.

I think my recollection that it never happens when you were given directives.

ADV SALUKAZANA: Certainly. And then at 21.4, what were your interactions with the Minister?

ADV MPSHE: Yeah, look, the NPA reports to the Minister of Justice. And it was a policy that when a high-profile type of a matter is dealt with, including TRC matters, I think, I want to think of that, the Pebco
10 Three matter is an example that comes to my mind. Then the Minister is to be informed by way of a memorandum and the Minister would also call for a report on any matter within the realm of the TRC. So I had to report to him now and then.

ADV SALUKAZANA: Did the nature of engagement ever extend to decision-making insofar as prosecution is concerned?

ADV MPSHE: Not at all. Even the Minister could not do that.

ADV SALUKAZANA: Certainly.

ADV MPSHE: The National Director only could.

ADV SALUKAZANA: Thank you. Could you read paragraph 22 for
20 us at 1653?

ADV MPSHE:

"22 When I assumed my role as the Acting NDPP, the PCLU, which handled the TRC matters, reported to Dr Ramaite, who served as the Special Deputy National Director."

ADV SALUKAZANA: Who did Dr Ramaite report to?

ADV MPSHE: He was reporting directly to the National Director.

ADV SALUKAZANA: And the National Director at the time was you acting. Is that correct?

ADV MPSHE: Yes, at the time, yes.

ADV SALUKAZANA: Certainly. And then your engagements with the PCLU, did you ever get involved in the manner in which investigations would be conducted or interactions with SAPS would be handled for investigation?

10 ADV MPSHE: No, I could not and I did not get that involved, but when you mention interaction with SAPS, I can say my involvement was present there for the simple reason that there was a time when the SAPS, and I think NIA as well, were refusing directly into my face that they are not going to investigate TRC matters. Now, that is where I got involved and sought advice, even from the National Commission of Police. I think then it was Jackie Selebi, yes, and I had meetings with him about releasing police to investigate these matters. Same applies to members of NIA.

20 ADV SALUKAZANA: Certainly. In fact, in the notice there is a conversation about you trying to resolve SAPS issues with Mr MacAdam, but we will get to that later.

ADV MPSHE: Okay.

ADV SALUKAZANA: If you could then read 23 for us.

ADV MPSHE:

"23 Adv Ackermann, was the head of the PCLU,

working with Adv MacAdam, as the Deputy Head. Dr Pretorius was the other member and they were later joined by Mr Shaun Abrahams. Adv MacAdam was, however, from time to time, involved in special projects such as prosecuting the nuclear case and representing the NPA in the Financial Action Task Force ("FATF"). Adv MacAdam returned from the FATF in June 2008 to assume the operational management functions and responsibilities of TRC matters within the PCLU. I detail below the management and operational structure of TRC matters during my tenure."

10

ADV SALUKAZANA: So when you arrived, the PCLU existed and it was run by Mr Ackermann, is that the point of the story?

ADV MPSHE: That is correct.

ADV SALUKAZANA: And they did not report to you but reported to Mr Ramaite is that the point?

ADV MPSHE: Indeed.

20 ADV SALUKAZANA: Certainly, and whilst you were there, there was work being conducted insofar as you understood by this?

ADV MPSHE: Oh yes, work was going on, yes.

ADV SALUKAZANA: Certainly. And then we will, I do not know if you have the notice before you, because it is not included in the bundle, the notice in terms of Rule 3.3.

ADV MPSHE: The 3.3 notice, I think I saw it, let me check the index.

ADV SALUKAZANA: Certainly, I will give you a moment.

ADV MPSHE: Let me check, I think it is on page 124. Do you want me to go to it?

ADV SALUKAZANA: Please.

ADV MPSHE: 124.

ADV SALUKAZANA: Specifically paragraph 270.

ADV MPSHE: No, no, no, this is the terms of reference.

ADV SALUKAZANA: Yes, that is on record.

10 ADV MPSHE: Is that on?

ADV SALUKAZANA: No, no, no, I did not come across the notice in the bundle.

ADV MPSHE: May I just check on this one?

ADV SALUKAZANA: Certainly.

ADV MPSHE: There is another bundle here. No, it is not here in this bundle.

ADV SALUKAZANA: I suppose for the sake of the record, I will read into the record the parts to which I wish to refer you insofar as the notice is concerned and then ask the consequent questions and then
20 we will refer back to your statement insofar as specific responses and references are to annexures. So at 270, the second paragraph reads:

"On 23 September 2007, Pikoli was suspended from office by President Mbeki. Shortly after his suspension, he learned that Ackermann had been relieved of his duties in relation to the TRC cases.

According to Ackermann, (that is 271), he was summoned to the office of Adv Mpshe, who had been appointed Acting NDPP. Mpshe advised Ackermann that he was relieved of his duties in relation to the TRC cases with immediate effect."

If I may stop there. Did this happen?

ADV MPSHE: This did not happen on that date. In other words, Ackermann was not relieved of his duties on TRC matters in 2007.

ADV SALUKAZANA: Certainly. And then it goes on to say in his
10 affidavit, I am still at paragraph 271 of the Rule 3.3, it says:

"In his affidavit, (FA8), Ackermann asserted that he had no doubt that Adv Mpshe received political instruction to remove me from these cases."

Is that statement correct?

ADV MPSHE: It is incorrect. I did not receive any political instruction at all.

ADV SALUKAZANA: Certainly. In fact, you will explain why.

ADV MPSHE: That was his opinion, I think, yeah.

ADV SALUKAZANA: Certainly. Indeed. Thank you. And then,
20 insofar as that is concerned, may I ask that we go back to the statement, specifically at page 1655, starting at paragraph 28, two eight.

ADV MPSHE: Right.

"28 In his affidavit, Adv Ackermann alleges that shortly after Mr Pikoli's suspension on 23

September 2007, I immediately assumed the position of Acting NDPP, and I summoned him to my office and advised him that he was relieved of his duties in relation to TRC cases with immediate effect. This is incorrect. While I confirm that I relieved Adv Ackermann of his operational functions and responsibilities in relation to TRC matters, this did not happen immediately after my appointment, and the suspension of Adv Pikoli. I also explain below the reason and context within which I relieved Mr Ackermann of his operational functions and responsibilities in relation to TRC matters."

ADV SALUKAZANA: 29.

ADV MPSHE:

"29 Soon after my appointment as NDPP, I held briefings with various stakeholders, including those that were responsible for TRC matters as mentioned in paragraph 21 above. During these engagements, it had become apparent to me that there was much acrimony directed towards Adv Ackermann and his management of TRC matters. In my opinion, these were personality issues."

ADV SALUKAZANA: Carry on.

ADV MPSHE:

"Further, during or about November 2007, I received information concerning a complaint lodged by Reverend Frank Chikane, who was the Director General of the Presidency. Reverend Chikane had been a complainant in the matter of State v Van der Merwe and Others. This matter concerned the poisoning and attempted murder by security police of Reverend Chikane by the accused. Mr Ackermann was the prosecutor in the matter. I attach hereto, marked annexure "MJM1" ...[intervenes]"

ADV SALUKAZANA: May I ask that we go to MJM1 because I would like to draw your attention to specific paragraphs. It is at page 1663.

ADV MPSHE: Thank you.

ADV SALUKAZANA: It is MJM1.

ADV MPSHE: My pages do not have 16. Let me check on this one because there are two bundles here.

ADV SALUKAZANA: Certainly. 1663.

ADV MPSHE: This one ends up with 1113.

20 ADV SALUKAZANA: Okay. So, could you just go to the end of the statement that you have?

ADV MPSHE: My statement?

ADV SALUKAZANA: Yes. Where you found it. Maybe the annexures. It is just better to refer to the annexures instead of page numbers. May I ask that you go to the last page?

ADV MPSHE: The last page of my statement?

ADV SALUKAZANA: Of your statement. If you can find that.

ADV MPSHE: Yeah. In the last page, I see Annexure MJM1.

ADV SALUKAZANA: Over the page, that is correct.

ADV MPSHE: Yeah.

ADV SALUKAZANA: Okay. You have already referred to the letter, but I want to specifically ask that you read the third paragraph of the letter. Given the contents that this is the letter that Mr Chikane or Reverend Chikane sent to the minister complaining about the prosecution of his case.

10

ADV MPSHE: The paragraph starting with the "first point".

ADV SALUKAZANA: The first point, that is correct.

ADV MPSHE: Okay.

"The first point I would like to raise is the handling of this matter by the National Prosecuting Authority ("NPA"). From my interaction with the relevant officials within the NPA, it is clear to me that the said officials are simply the wrong people to deal with the matter. In fact, they did not seem to understand the nature of the challenge we were facing. Firstly, my court case was used to fight battles between the NPA and the government about the guidelines for dealing with post-TRC cases. Throughout this process, I was left with a feeling that no one in fact cared about

20

me as a victim. What mattered were the politics around the handling of the post-TRC cases and how people would win their battles."

ADV SALUKAZANA: Let us start with the NPA officials to which the letter refers. Who did you understand them to include? Did it include Mr Ackermann?

ADV MPSHE: Yeah, it did include Mr Ackermann.

ADV SALUKAZANA: In fact, he is named by name in the next paragraph, which I would ask that you read as well.

10 ADV MPSHE: Yeah.

"As part of the consultative processes relating to the case of the State versus Van der Merwe and others, Adv Ackermann, the Special Director in the Priority Crime Investigation Unit, and his assistant visited me (as the victim). Instead of just consulting me as the victim, he entered into an acrimonious argument with me about the approach of the government on post-TRC matters and the guidelines. From this interaction, it was clear that he was radically opposed to the guidelines as agreed upon by Cabinet and the Parliament of the Republic of South Africa. In fact, he seemed to be more interested in prosecution for the sake of it rather than the management of this difficult post-TRC process."

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ADV SALUKAZANA: Is this one of the issues that you say you considered from stakeholders that affected or reflected badly on Mr Ackermann and his interactions with stakeholders?

ADV MPSHE: Yes, this is one of them, yes.

ADV SALUKAZANA: Thank you. Could you then read the following paragraph, and that is the last paragraph I will ask you to read of this.

ADV MPSHE:

10 "What I detested most was that my case was being used to fight their battles with the government. In pursuit of this objective, a draft letter which was constructed in a manner that would enhance their position in the prescribed forum with other departments was presented to me for my signature. What was more disgusting for me was that when I refused to sign the draft letter, Adv Ackermann then threatened to use section 204 of the Criminal Procedure Act against me to force me to surrender all the information he claimed I had received from Mr Vick on my poisoning. I dared him to do so."

20

COMMISSIONER KGOMO: Mr Vlok.

ADV MPSHE: Oh, Mr Vlok, thank you. Thank you, Commissioner.

"I dared him to do so and reminded him that this was tried against me during the apartheid days and it did not work, and that there is no reason

why it would work now. He backed off and left.

His colleague who was with him is my witness in this regard."

ADV SALUKAZANA: Who is the colleague that was with him?

ADV MPSHE: Adv Mthunzi Mhaga.

ADV SALUKAZANA: Thank you. And then whilst in sort of considering this letter, I ask that you go to MJM2.

ADV MPSHE: I think it should be part of this. It will be down the line.

ADV SALUKAZANA: It is just a couple of pages.

10 ADV MPSHE: Down the line.

ADV SALUKAZANA: Certainly. So if you look at Mr Chikane's signature.

ADV MPSHE: MJM2. Okay, I see MJM3B. Let me go back.

COMMISSIONER KGOMO: That would be at page 1666?

ADV SALUKAZANA: Yes.

ADV MPSHE: 1666. Thank you. Thank you, Commissioner.

ADV SALUKAZANA: It is a letter or a memorandum of 24 January 2008.

ADV MPSHE: Yes, I am there.

20 ADV SALUKAZANA: Thank you very much.

ADV MPSHE: It is a letter to the Minister.

ADV SALUKAZANA: Yes.

ADV MPSHE: Yeah.

ADV SALUKAZANA: And I will not ask you to go there because it is long. It is a letter that is under your signature at 1672. Do you

confirm that that is your signature?

ADV MPSHE: Yes, let me confirm first. Yes, indeed.

ADV SALUKAZANA: All right. So then if we may start with the introductory paragraph, which reads "as requested". Who had made the request that resulted in this letter?

ADV MPSHE: The Minister.

ADV SALUKAZANA: How was the request made?

ADV MPSHE: The request was made in writing to comment or asking the NPA to comment on the complaint by Reverend Chikane.

10 ADV SALUKAZANA: So that is how you came across ...[intervenes]

COMMISSIONER KGOMO: Sorry, before you go too far, the letter is dated the 24 January 2008. Is that correct?

ADV MPSHE: That is correct, Commissioner.

COMMISSIONER KGOMO: Yes. Sorry to interrupt, but you can continue.

ADV MPSHE: Yeah.

ADV SALUKAZANA: Thank you, Commissioner. So is that how you came across or came to know of Mr Chikane's complaint?

ADV MPSHE: Indeed.

20 ADV SALUKAZANA: Certainly. Could you then just explain to us what the nature and spirit of the representations were before I refer to the particular paragraphs? Did you write this on behalf of the NPA or you as the NDPP, or did you write it on behalf of the officials about whom the complaints were made?

ADV MPSHE: No, I wrote this on behalf of the NPA as the head of

the NPA responded to the Minister.

ADV SALUKAZANA: Thank you. Could you at page 1667 read paragraph 2?

ADV MPSHE:

"As a result of this letter and the prominent role played by Adv Ackermann, I have deemed it prudent to relieve him from all TRC-related duties since November 2007."

ADV SALUKAZANA: And can we confirm that November 2007 is
10 after the letter from Mr Chikane?

ADV MPSHE: Indeed, indeed.

ADV SALUKAZANA: Certainly. And then, insofar as how you proceeded going forward, could you please read paragraph 4 on the same page?

ADV MPSHE: Yeah.

"I have decided that all future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga, and the TRC Task Team."

20 ADV SALUKAZANA: So it would be incorrect for anyone to assume, speculate, or indeed contend, as a matter of fact, that after relieving Mr Ackermann of his responsibilities, there was no assignment to other people of the cases?

ADV MPSHE: No, that would be incorrect because there were people who were manning that unit.

ADV SALUKAZANA: And you understood or believed those people to be competent to prosecute the case?

ADV MPSHE: Indeed. Indeed.

ADV SALUKAZANA: Could you go under AD paragraph 4 for us, please?

ADV MPSHE: AD paragraph 4.

10 "Both Advocates Ackermann and Mhaga denied that there was an acrimonious argument. See also paragraph 5 in front. Adv Ackermann admits that he had some concerns about the guidelines and in a number of official memoranda raised his concerns on the constitutionality thereof. Despite reservations, he diligently applied the criteria as stipulated in the guidelines. With the wisdom of hindsight, it appears that there was some merit in Adv Ackermann's reservations. Indicative thereof is the institution of a civil action in the High Court challenging the validity of the TRC guidelines. It is *Nkadimeng and others v NDPP and Ministry of*

20 *Justice and Constitutional Development.*"

ADV SALUKAZANA: Thank you. So would it be fair or reasonable to say that in this, or before you wrote this, you engaged Mr Ackermann about the complaints?

ADV MPSHE: Indeed. Indeed. Both Ackermann and Mhaga.

ADV SALUKAZANA: And you allowed him an opportunity to state or

at least respond to what was said about him?

ADV MPSHE: Indeed.

ADV SALUKAZANA: Thank you.

COMMISSIONER GABRIEL: And would it be correct for me to conclude that you supported them in this letter to the Minister?

ADV MPSHE: Yes, I did. I did.

ADV SALUKAZANA: Thank you. And then if we may go to AD OR response to paragraph 6 which is at 1669 and it is under the heading AD paragraph 6.

10 ADV MPSHE: Paragraph 6.

ADV SALUKAZANA: AD paragraph 6.

ADV MPSHE: Yeah.

"Adv Ackermann admits not having consulted with Reverend Chikane on the details of the plea and sentence agreement. Adv Chikane, (no they said Adv Chikane, all right), was however informed of the proposed suspended sentences."

20 ADV SALUKAZANA: Certainly. So in this, in his engagement with you, Mr Ackermann confirmed one of the complaints that Mr Chikane raised.

ADV MPSHE: Yes, yes. That of not having explained to him in full the meaning of the plea sentencing.

ADV SALUKAZANA: What did you think of the failure to engage Mr Chikane about this?

ADV MPSHE: I think that was out of line by Adv Ackermann because

you need to take on board with you the victim. He has got to understand everything about the plea agreement and he has got to consent thereto. I think it is just a little bit out of line by him.

ADV SALUKAZANA: Certainly.

ADV MPSHE: But he did at the end inform him about the sentence that was proposed in the agreement. Yeah.

ADV SALUKAZANA: Indeed. Thank you very much. If we then could go back to paragraph 30 of your statement that is where the conclusion insofar as those documents are concerned, it is at 1656.

10 In fact, it confirms what was put to you by the Commissioner about supporting Mr Ackermann in your response, but could you please read paragraph 30 for us?

ADV MPSHE:

20 "30 I fully supported Mr Ackermann in his response to the complaint, as is fully set out in my letter to Minister Mabandla; but the perception of him by stakeholders and the acrimony directed against him remained; and this would in my considered view compromise the necessary cooperation between the PCLU and the stakeholders with whom he was required to interphase in his work relating to TRC matters. Accordingly, and with effect from November 2007, I deemed it prudent to relieve Mr Ackermann from TRC-related duties and responsibilities. I was

however confident that this could be done without compromising the work on TRC matters as Adv Chris MacAdam would take over the TRC operational management and responsibilities as soon as he finished his FATF project. I attach hereto my letter dated 24 January 2008 marked as annexure "MJM2" addressed to Minister Mabandla, wherein I confirmed Mr Ackermann's removal and addressed the complaint against Mr

10 Ackermann by Reverend Frank Chikane."

ADV SALUKAZANA: Thank you. Before you removed Mr Ackermann, did you ever engage anyone else, including members of the PCLU?

ADV MPSHE: No, no, no.

ADV SALUKAZANA: Did you engage Mr Ramaite, who you said was the head of the PCLU?

ADV MPSHE: Yes, I did engage with both of them, Mr Ramaite as well as Anton Ackermann.

ADV SALUKAZANA: So, an assumption or speculation that you took

20 this decision based on political interference would not be correct?

ADV MPSHE: That would be incorrect.

ADV SALUKAZANA: An assumption that you did this without thinking about it and without engaging Mr Ackermann would also not be correct?

ADV MPSHE: Very incorrect.

ADV SALUKAZANA: Thank you.

COMMISSIONER GABRIEL: Before you move on, are you moving on to something else?

ADV SALUKAZANA: I am.

COMMISSIONER GABRIEL: So can I ask just two questions here. Adv Mpshe, in paragraph 29 and in paragraph 30 you deal with the reasons for the discord between Adv Ackermann and members of the groups. First you say that it has appeared to you that these were personality issues. And then you refer to the perception of him by the stakeholders in very acrimonious terms. Are you able to explain a bit more about that?

ADV MPSHE: Yeah, on personality issue, I was actually referring to Ackermann himself. He was the type of person who just blabbed and said things that were not supposed to be said. He was that type of person. But he was just a jolly person who just talked. And that is why I say it was a personality issue.

On the question of acrimonious attitude towards him, I was referring specifically to the complaint by Reverend Chikane. As well as insinuations and remarks that one would hear in meetings about him heading the PCLU. There was that feeling that he should have long been removed. He is not the right person to head the TCLU. And that was not in keeping with him doing the work according to them. Yeah, that is what I was referring to.

COMMISSIONER GABRIEL: Okay. Thank you.

ADV SALUKAZANA: Thank you. We are going to move on now to

whether or not Mr Ackermann remained involved, because that is also an insinuation in the Rule 313 in the matters. It is as if you completely sidelined him. Could you read for us paragraph 31?

ADV MPSHE: Yeah.,

10 "31 I refer to an internal memorandum dated 5 June 2008 addressed by Adv Ackermann to Dr Ramaite, the then Deputy National Director of Public Prosecutions. The subject matter of which is the TLC Task Team. In that memorandum, Adv Ackermann refers to a meeting between him, Adv MacAdam and Dr Ramaite, which concerned new internal arrangements and allocation of functions and responsibilities for TLC matters and confirms the following. One, that Adv MacAdam, who had now returned from FATF, will supervise and manage Adv Mhaga. Two, that Adv MacAdam will attend all meetings of the task team and attention will be paid to all investigations registered to date and in that
20 regard, Dr Bukau will also be co-opted to deal with certain matters."

ADV SALUKAZANA: May you just stop there please. What matters are you referring to? Are these the TLC matters or general?

ADV MPSHE: These are TLC matters.

ADV SALUKAZANA: Thank you. You can go on to number three.

ADV MPSHE: Thank you.

"That prosecutors will not perform functions that will usurp the duties of the SAPS and N-I-A, NIA. That the PCLU, as contemplated by the guidelines, will be responsible for operational management of TLC matters under the supervision of Dr Ramaite and that of the NDPP. The memorandum deals with TLC matters, such as the Pebco Three case. I attach a copy of the internal memorandum marked MJM3A, MJM3B, MJM3C, MJM3D. It is noted that these internal arrangements concerning TLC matters were being implemented under the overall supervision of Mr Ackermann."

ADV SALUKAZANA: So he had overall supervision despite you having relieved him of his duties. What do you say about that?

ADV MPSHE: The allegations that I removed him in 2007?

ADV SALUKAZANA: Yes.

ADV MPSHE: And I did not do that in 2007. I did that in 2008, as per letter to the Minister, but what I have just read here indicates that the allegation of 2007 is incorrect because it is clear that way down in 2008 he was still dealing with TRC matters. Am I responding correctly?

ADV SALUKAZANA: You have. It is just there is an issue I wish to get clarity on. You have now twice said you removed him or relieved

him of his duties in 2008. However, in MJM2, if you could go there, that is the letter of 24 January 2008 and if you go specifically to paragraph 2, you say... I will wait for you to get there ...[intervenes]

ADV MPSHE: Is it where I mentioned 2007?

ADV SALUKAZANA: Certainly.

ADV MPSHE: Yeah. You will recall when I read that I said there is a mistake here, yeah.

ADV SALUKAZANA: So you stand by that you only relieved him in 2008 despite what is said here.

10 ADV MPSHE: Indeed.

ADV SALUKAZANA: This is an error in this letter.

ADV MPSHE: It is an error the 2007.

ADV SALUKAZANA: All right. Thank you.

ADV MPSHE: Yeah.

ADV SALUKAZANA: Could you then go to paragraph 32?

COMMISSIONER GABRIEL: Sorry, can I just ask a clarification question? What did you mean in this letter when you say you relieved him of all TRC related duties?

20 ADV MPSHE: That is the management thereof and the prosecution thereof. He was off, but he still remained the head of the PCLU.

COMMISSIONER GABRIEL: In a supervisory capacity.

ADV MPSHE: Indeed. He still remains there.

COMMISSIONER GABRIEL: Thank you.

ADV SALUKAZANA: And in fact, that is what you state at bullet point 4 that it is noted that these internal arrangements concerning TRC

matters were being implemented under the overall supervision of Mr Ackermann.

ADV MPSHE: Yes.

ADV SALUKAZANA: That is in line with what the Commissioner has asked.

ADV MPSHE: That is correct.

ADV SALUKAZANA: Certainly. Could you please read 32 for us?

ADV MPSHE:

10 "32 I refer to an internal memorandum dated 9
June 2008 addressed to me by Adv MacAdam
relating to TRC cases wherein he discusses the
NPA annual plan that required the PCLU to
formulate an action plan for the prompt and
effective disposal of TRC cases. Adv MacAdam
in the internal memorandum that as a
consequence of the action plan decision, Adv
Ackermann and him had meetings with Adv
Mzinyathi and Dr Ramaite, pursuant to which an
agreement was reached that Adv MacAdam
20 should attend the task team meetings as well as
any strategic discussions involving Dr Ramaite
and I. I attach a copy of the memo marked
MJM3E."

ADV SALUKAZANA: We will refer to the memo and its contents later. Could you just go on to 33?

ADV MPSHE: Okay.

"33 The next email is dated 09 July 2008, it is from Ms Helena Zwart, who was an assistant in the office of Adv Ackermann and Adv MacAdam. Its subject matter is also TRC matters and is addressed to Adv. Ackermann. The email lists several TRC matters which Adv MacAdam requests Adv Ackermann to address during his absence the following week. I attach the email
10 marked as annexure "MJM4".

ADV SALUKAZANA: 34.

ADV MPSHE:

"34 The next memorandum is dated 01 October 2008 from Adv MacAdam addressed to Dr Ramaite and copied to Adv Ackermann, and deals with the TRC case of Dr Anton Lubowski. I attach the email as annexure "MJM5"."

ADV SALUKAZANA: So it is a year later and Mr Ackermann is still engaged?

20 ADV MPSHE: He is still there and he is still engaged in the TRC matters.

ADV SALUKAZANA: By a year later, for the record, I mean a year after your appointment?

ADV MPSHE: A year after, yes, yes.

ADV SALUKAZANA: Paragraph 35?

ADV MPSHE:

"35 On 10 December 2008, Adv MacAdam addressed an email to Dr Ramaite, in which Adv Ackermann is copied, and the email reports on TRC issues of the year 2008, and notes that the majority of matters referred to therein can only be taken forward with the assistance of SAPS and NIA. It further recommends that, as a matter of urgency in 2009, a meeting should be set up with the acting NDPP, Adv Ackermann and Adv MacAdam to obtain the NDPP's approval on the way forward. I attach a copy of the email marked "MJM6"."

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ADV SALUKAZANA: And then your conclusion at 36?

ADV MPSHE: Oh.

"36 The memoranda referred to above are a contemporaneous record and reflect that Adv Ackermann was months after my appointment as ANDPP, allocating operational management functions and responsibilities relating to TRC matters: This after consultation with Dr Ramaite, who was the DNPP responsible for the PCLU and TRC matters. Mr Ackermann therefore retained his supervisory role over the staff dealing with TRC matters within the PCLU. I had no

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objections to this arrangement."

ADV SALUKAZANA: Thank you. So then, to go back to the Rule 3.3 notice, which I accept you do not have, specifically paragraph 271, and in concluding on what you have read to us, it would be incorrect that you removed Mr Ackermann as a result of or after receiving political instruction to remove him from the case.

ADV MPSHE: Completely incorrect.

ADV SALUKAZANA: And he also, at least in the notice, it is stated that Ackermann advised Mpshe that removing him from the TRC cases would not make the cases go away. Is that correct?

ADV MPSHE: I do not remember hearing that from him.

ADV SALUKAZANA: Thank you. We will then move on to paragraph 305.

CHAIRPERSON: Mr Salukazana, if I may just interpose. We have gone past our tea adjournment time. Would this be an appropriate time to adjourn for tea before you go to the next issue?

ADV SALUKAZANA: It would, Chairperson, thank you very much.

CHAIRPERSON: We will adjourn until 11:30.

INQUIRY ADJOURNS

20 INQUIRY RESUMES

CHAIRPERSON: Thank you, Mr Salukazana.

ADV SALUKAZANA: Thank you, Chairperson. We are going to go now to the other allegation or implication at paragraph 305 of the Rule 3.3 and because you do not have it, I will read it:

"It can be safely assumed that little or no work was

carried out by the NPA, SAPS or DSO on the TRC cases during 2008. The Acting NDPP Mpshe had already relieved Ackermann of his responsibilities in respect of the TRC cases. He could hardly be expected to champion the TRC cases going forward and indeed did not.”

Let us start with the last statement that he could not be expected to champion the cases and he did not. This statement is not correct, am I correct, if you take into account that he was still
10 involved in October 2008?

ADV MPSHE: Yes, it is not correct.

ADV SALUKAZANA: And then insofar as the first sentence is concerned that there was little to no work carried out on the TRC cases during 2008, that was not correct. Am I correct?

ADV MPSHE: Not correct at all.

ADV SALUKAZANA: And in fact, in the annexures there are updates that you give to the Minister about what was going on insofar as the cases are concerned and I am going to ask that we refer to two annexures that demonstrate that and the first is MJM7 to your
20 statement and it is at page 1691. It is a memorandum from you to Minister Surty dated 17 February 2009.

ADV MPSHE: Yes, I have it.

ADV SALUKAZANA: What is this document, do you recognise it?

ADV MPSHE: Yes, I do recognise this memorandum which was directed to Minister Surty.

ADV SALUKAZANA: Were you the author of the memorandum?

ADV MPSHE: Yes, I was.

ADV SALUKAZANA: So could you read what the purpose of that memorandum was at paragraph 1?

COMMISSIONER KGOMO: And it is dated the 17 February 2009, is it?

ADV MPSHE: That is correct, Commissioner.

COMMISSIONER KGOMO: Yes.

ADV MPSHE:

10 “The purpose of this memorandum is to inform the Minister of my intention to reconvene the TRC Task Team and to advise him of matters relating thereto.”

ADV SALUKAZANA: Why did you have to reconvene the Task Team, what had happened to it?

ADV MPSHE: The Task Team had gone into some kind of a lull regarding the investigation of TRC matters, nothing was actually going on in that unit or in that structure, and my reconvening thereof was specifically targeted at getting them to assist in the investigations.

20 ADV SALUKAZANA: Thank you. I will then go down to the briefing paragraph which is at 3.1 at page 1692.

ADV MPSHE: Ja, ja.

ADV SALUKAZANA: Could you read that for us, please?

ADV MPSHE:

“Members of my office have met with the Divisional

Commissioner of the Detective Service of SAPS and the Deputy Director-General: Operational Support of NIA. Both agencies have indicated their willingness to again participate in the Task Team and to perform duties within their agencies' mandates."

ADV SALUKAZANA: Could you give us context on what you meant there?

ADV MPSHE: This is as a result of my communicating with them, with the Task Team members who were outside the SAPS [indistinct] and others and requested them to do, to give assistance to the investigations. They then agreed that they will come back and perform the duties. The duties basically is investigations, that is what is meant in that paragraph.

ADV SALUKAZANA: Thank you. Paragraph 3.2?

ADV MPSHE:

"After I have received feedback from you, I intend submitting written invitations to the relevant Directors General, inviting them to nominate staff members to form part of the Task Team and to arrange a date for the first meeting of the Task Team."

ADV SALUKAZANA: 3.3?

ADV MPSHE:

"No request to investigate TRC matters have been received since November 2007 and it is anticipated that once the matters on hand have been dealt with, that the

chapter on these cases may be closed. In its report released in 1998, the TRC did in fact recommend that a time limit should be imposed on such prosecutions.”

ADV SALUKAZANA: Thank you. And then the following paragraphs you list the cases ...[intervenes]

ADV MPSHE: The cases, yes.

ADV SALUKAZANA: That were ongoing.

ADV MPSHE: Ja.

ADV SALUKAZANA: Were these cases, cases that were or at least
10 your office was still, the PCLU was still working on ...[intervenes]

ADV MPSHE: Indeed.

ADV SALUKAZANA: Throughout your term?

ADV MPSHE: Yes, yes.

ADV SALUKAZANA: So this report is an indication that there was work going on and that you were giving a status report on the work that was being done?

ADV MPSHE: Indeed.

ADV SALUKAZANA: So a statement that little to no work was done when you have given a report on at least nine cases is ...[intervenes]

20 ADV MPSHE: Incorrect.

ADV SALUKAZANA: Unfair and incorrect?

ADV MPSHE: Yes.

ADV SALUKAZANA: Thank you.

COMMISSIONER GABRIEL: Can I take you back to paragraph 2.2?

ADV MPSHE: 2.2.

COMMISSIONER GABRIEL: You say:

“Since 2007, the Task Team has not sat, due to the fact that matters relating to it were tabled before the...”

ADV MPSHE: Ginwala Commission.

COMMISSIONER GABRIEL:

“The Ginwala Commission. The effect thereof was that investigations into TRC matters could not continue.”

ADV MPSHE: Ja.

COMMISSIONER GABRIEL: So you are saying from November
10 2007 to when you wrote this letter, February 2009, there were no investigations?

ADV MPSHE: There were no investigations ja, and as that paragraph indicates, 2.2, the main reason why very little was done or nothing was done, was because of the sitting of the Ginwala Commission that was, where Adv Pikoli was appearing.

COMMISSIONER GABRIEL: And the TRC matter figured in there somewhere?

ADV MPSHE: Yes, they did, they did.

COMMISSIONER GABRIEL: All right.

20 ADV MPSHE: Thank you, Commissioner.

COMMISSIONER GABRIEL: Thank you.

ADV SALUKAZANA: Thank you. I will then go back to your statement. Again we are dealing with the allocation of the TRC Portfolio and role of allocation. If you could ...[intervenes]

ADV MPSHE: Is it still on page 16?

ADV SALUKAZANA: No, we are going back to ...[intervenes]

ADV MPSHE: Oh, to the statement.

ADV SALUKAZANA: Page 1659.

ADV MPSHE: Yes.

ADV SALUKAZANA: Of the statement.

ADV MPSHE: Ja.

ADV SALUKAZANA: Paragraph 37.

ADV MPSHE: Ja.

ADV SALUKAZANA: If you could read that for us, please?

10 ADV MPSHE:

“I deny that I stopped or intended to stop the investigation or prosecution of TRC matters, whether by instructions, policy formulation, or any stratagem; or that I acted on any improper political instruction, or that I participated in any collusion to suppress the investigation and prosecution of TRC matters.”

ADV SALUKAZANA: 38?

ADV MPSHE:

20 “I have already explained that I did not engage in any matters relating to the TRC which were being considered by the PCLU.”

ADV SALUKAZANA: What did you mean you did not engage in any matters?

ADV MPSHE: Engage here would mean I did not participate to say when they sit, when the PCLU sit and they consider a particular

application, it would be their duty alone maybe under supervision of a or with the presence of Dr Ramaite, but I would not be sitting in their work processes.

ADV SALUKAZANA: Okay. If you to 39, please?

ADV MPSHE: Thank you:

10 “While I was Acting NDPP, I had no reason to believe that there was any interference with prosecutorial discretion. This is supported by reports that were tabled at meetings I attended with the leaders of various units, including the PCLU. To the extent that there were delays, inactivity, or limited progress in any matter during my tenure as the Acting NDPP, those circumstances must be understood against the practical constraints that existed at the time. The prosecution of complex historical matters is ordinarily dependent on complete investigation dockets, the identification and location of witnesses, sufficient admissible evidence, and the ability of the investigative authorities to prioritise and execute the required investigative steps.

20 Challenges in interdepartmental cooperation and coordination may therefore have affected capacity and timing. Those constraints do not, without more, amount to interference with prosecutorial discretion. There were however constraints regarding the availability of investigators because the SAPS management and the

NPA differed in the interpretation of each other's roles in the implementation of the NPA Policy and Guidelines.”

ADV SALUKAZANA: And in the light of this, to take you back and giving context to the question from the Commissioner about there not being any investigators, what is, does that have an effect on insofar the prosecution of the TRC cases were concerned after the dissolution of the Task Team?

ADV MPSHE: What is that that you said?

ADV SALUKAZANA: I am asking, the Commissioner asked you or
10 referred you to a paragraph of your letter.

ADV MPSHE: Ja.

ADV SALUKAZANA: Of February 2009.

ADV MPSHE: Yes, ja.

ADV SALUKAZANA: Paragraph 2.2 that says as a result of there not being a Task Team ...[intervenes]

ADV MPSHE: Ja.

ADV SALUKAZANA: There have been no investigations or investigators available.

ADV MPSHE: Ja.

20 ADV SALUKAZANA: Here you talk about those constraints.

ADV MPSHE: Yes.

ADV SALUKAZANA: Would I be correct then in saying that amongst those constraints was that there was no Task Team to investigate?

ADV MPSHE: Yes, yes.

ADV SALUKAZANA: And amongst those constraints was also that

there was an issue between SAPS and the NPA and the NIA about investigations?

ADV MPSHE: Indeed, indeed.

ADV SALUKAZANA: And without the investigations, the NPA could not really conduct its work?

ADV MPSHE: It could not do anything because these TRC matters, first when they appeared in the TRC, there were investigations. Remember, I am sorry, the TRC had specialised investigators who came from abroad, I think USA sent us some investigators and I think
10 Germany also sent us some investigators, so what they were doing, they would do investigation in accordance with their mandate but thereafter then you needed SAPS or NIA to continue with investigations to complete a docket to put together the evidence for prosecution purposes.

ADV SALUKAZANA: And without that involvement of investigations ...[intervenes]

ADV MPSHE: Nothing could be done ...[intervenes]

ADV SALUKAZANA: Certainly.

ADV MPSHE: Nothing could be done.

20 COMMISSIONER GABRIEL: What was the issue as you understand it, between NPA and SAPS?

ADV MPSHE: Oh, there is a turf issue, Commissioner.

COMMISSIONER GABRIEL: Explain, please.

ADV MPSHE: Ja it was a turf issue in that what I recall is that the Scorpions, the DSO members were trained by Scotland Yard. They

were trained abroad and not in South Africa like the SAPS members, and that was not taken well by SAPS and that they made it clear to us. Number two, it was the issue of the salary that the DSO, the Scorpions, was given to its members. That affected SAPS in that senior members of SAPS resigned from SAPS to join the DSO, so that created that turf issue.

COMMISSIONER GABRIEL: But you say here that they differed over each other's roles in the implementation of the NPA Policy and Guidelines. What was the difference there? Is that what you have
10 just described?

ADV MPSHE: It is what I have just described as well as, because that implementation as well as the involvement of section 105A of the Criminal Procedure Act, they said that should not have been done or that we should not do as the NPA because these matters are political matters and people need to be seen to be prosecuted and not being given a, I remember one member said to me, 'A free hand after committing a crime'.

COMMISSIONER GABRIEL: Thank you.

ADV MPSHE: Ja, thank you, Commissioner.

20 ADV SALUKAZANA: Thank you. In line with what you have said, I am going to list, refer you to the Rule 3.3 notice, specifically paragraph 306 and will ask for your comment insofar as that is concerned, and it is:

"Macadam records in his affidavit filed in Rodrigues or Rodriguez, that in early 2009, Mpshe summoned him to

his office and showed him a letter written by SAPS, indicating that it was withdrawing from the ITT.”

The ITT is the Task Team?

ADV MPSHE: Yes.

ADV SALUKAZANA: Ja, and...[intervenens]

ADV MPSHE: Ja, that is correct, ja.

ADV SALUKAZANA: So even they list insofar as the Calata statement is concerned and the Rule 3.3, acknowledged that there was a withdrawal by SAPS on investigations?

10 ADV MPSHE: Yes, yes.

ADV SALUKAZANA: And then at 306.3, the Calata affidavit states:

“Mpshe asked Macadam to negotiate with SAPS and try to get them to agree to investigate cases. Mpshe also told Macadam to take over the TRC cases.”

ADV MPSHE: Yes.

ADV SALUKAZANA: So this is in 2009, is that correct?

ADV MPSHE: Well that is correct.

ADV SALUKAZANA: Thank you. I ask that we go back to your statement at paragraph 40, page 1661.

20 ADV MPSHE: Thank you.

ADV SALUKAZANA: If you could read paragraph 41 for us, please?

ADV MPSHE: Oh:

“I do not accept that the position can properly be reduced to a simple assertion that “no work” was done or that matters were “left unattended.” The available

contemporaneous documentary record reflects internal management and supervision arrangements concerning TRC matters within the PCLU during 2008, including the arrangements recorded in MJM3 annexed here above.”

ADV SALUKAZANA: So despite the withdrawal during or at least after 2007, there was still activity within the NPA insofar as those cases are concerned?

ADV MPSHE: Yes, ja.

ADV SALUKAZANA: So it is not that there was no work done in the
10 light of the withdrawal?

ADV MPSHE: Not at all.

ADV SALUKAZANA: So then at 306.2, I beg your pardon for the jumping around, but of the Rule 3.3 it says ...[intervenes]

ADV MPSHE: Okay.

ADV SALUKAZANA:

“Since the SAPS had not been investigating the TRC cases, their withdrawal did not mean much, however according to MacAdam it would mean that going forward, the TRC matters would again not be
20 investigated because the decision had already been taken to disband the DSO.”

To start with the first sentence, since the SAPS had not been investigating the TRC cases, their withdrawal did not mean much. Is it correct that you were not frustrated or impeded or crippled by the withdrawal of investigators?

ADV MPSHE: I would not say we were not frustrated, we were frustrated but the frustration was manageable in the sense that NIA was still there to assist, though they also were assisting on a, can I say a limited scale, but work could still be done despite SAPS' withdrawal.

ADV SALUKAZANA: But would it be correct to say that SAPS' withdrawal was not insignificant?

ADV MPSHE: No, no, it was not insignificant, indeed.

ADV SALUKAZANA: Certainly, thank you. I am going to jump back
10 to your statement.

ADV MPSHE: Yes.

ADV SALUKAZANA: And again in the same line of concerning the investigations, if you could read paragraph 42?

ADV MPSHE: Ja:

"I further record that any material progress in TRC prosecutions depended on investigative cooperation, docket readiness, and resourcing, all of which were not within the unilateral control of the NPA."

ADV SALUKAZANA: Carry on, please.

20 ADV MPSHE: Okay:

"To the extent that it is contended that any alleged inactivity in 2008 is itself proof of intentional suppression or collusion, I deny that inference."

ADV SALUKAZANA: 44?

ADV MPSHE:

“I dispute that it is factually correct or that it can be assumed that little or no work was carried out by the NPA, SAPS, or DSO on the TRC cases during 2008. I have referred above to internal memoranda from “MJM3 to MJM7” as examples showing that work was being done during 2008 regarding TRC matters. These are merely examples and are not exhaustive. In addition to that, I attach my report to then Minister of Justice and Constitutional Development of the TRC work that was done during the relevant period, marked as Annexure “MJM7”. I also attach hereto a memorandum marked “MJM8” dated 28 May 2009 addressed to Minister Jeff Radebe in which I report on the PEBCO Three matter. The last page of the memorandum is however missing and will be furnished as soon as I find it.”

10 ADV SALUKAZANA: Thank you. We have dealt with the inactivity as you – do you wish to add anything to the allegation or implication that there was inactivity during 2008 which was within your acting stint?

20 ADV MPSHE: I do not think there is anything I can add further, safe to say that that statement is incorrect.

ADV SALUKAZANA: Thank you.

COMMISSIONER GABRIEL: Were any prosecutions brought during your tenure?

ADV MPSHE: Yes Commissioner, yes.

COMMISSIONER GABRIEL: Can you recall approximately how many?

ADV MPSHE: Well, I cannot.

COMMISSIONER GABRIEL: That is all right if you cannot recall.

ADV MPSHE: I cannot recall. I cannot recall, I am sorry. Thank you.

ADV SALUKAZANA: And addressing the Commissioner's question, may I refer you to MJM7 at page 1691? It is a memorandum from you to the ...[intervenes]

10 ADV MPSHE: To the Minister.

ADV SALUKAZANA: The Minister.

ADV MPSHE: That is the one dated 17 February 2009?

ADV SALUKAZANA: Certainly.

ADV MPSHE: Ja, do you want me to read that as well?

ADV SALUKAZANA: No, I ask that we refer to paragraph 3.4 and the cases listed under that.

ADV MPSHE: Oh, oh yes, ja:

“The following matters are on hand at present.”

20 These are matters when I say on hand at present, these are matters that the PCLU was busy with in terms of collating evidence, in terms of ensuring that there is a proper docket with *prima facie* evidence to can go to court. These are the cases that I have lifted, I have listed hereunder.

ADV SALUKAZANA: Okay.

ADV MPSHE: Ja.

ADV SALUKAZANA: All right, that was just to refer to the cases.

ADV MPSHE: Oh sure, sure.

ADV SALUKAZANA: Finally if I may refer to paragraph, list what is paragraph 315 under the implication section of the Rule 3.3 and it says ...[intervenues]

COMMISSIONER GABRIEL: Please can I interrupt you?

ADV SALUKAZANA: Certainly.

COMMISSIONER GABRIEL: Because I know you have all gone to something else.

10 ADV SALUKAZANA: Yes, that is quite correct.

COMMISSIONER GABRIEL: Is that existing letter MJM7, page 1694 ...[intervenues]

ADV SALUKAZANA: Ja.

COMMISSIONER GABRIEL: Paragraph 4, can you just read that?

ADV MPSHE:

“All of the above matters, except for the PEBCO Three case, require investigations by SAPS before I can make a decision whether there are sufficient grounds to institute prosecutions or not.”

20 COMMISSIONER GABRIEL: Okay.

ADV MPSHE: Ja.

COMMISSIONER GABRIEL: So it seems that they were not prosecution ready?

ADV MPSHE: They were not as yet, that is why when the, my lawyer asked me, I said these are cases that they were busy with.

COMMISSIONER GABRIEL: Busy with.

ADV MPSHE: Collating admissible evidence, getting a docket ready for prosecution purposes, but PEBCO Three was already ...[intervenes]

COMMISSIONER GABRIEL: Okay.

ADV MPSHE: In the pipeline.

COMMISSIONER GABRIEL: And this was dovetailed with the period where SAPS was not cooperating?

ADV MPSHE: Indeed.

10 COMMISSIONER GABRIEL: Okay, thank you.

ADV SALUKAZANA: Thank you, Commissioner. Back to the Rule 3.3 notice, specifically the quoted paragraph 315 which says:

“On 1 December 2009, President Jacob Zuma appointed Adv Menzi Simelane as NDPP. This was announced in a government press release dated 30 November 2009, ironically titled “Simelane fit to hold office”. The appointment was made notwithstanding the damning findings made against him by the Ginwala Inquiry.”

20 And then paragraph 316 says:

“While he was DOJ Director-General, Simelane had pressed Pikoli to remove Ackermann from the TRC cases. I can only speculate, but I believe that the probabilities are high that it was also Simelane who asked Acting NDPP Mpshe to remove Ackermann from

the TRC cases following the suspension of Pikoli. The arrival of Adv Simelane at the helm of the NPA was to doom the TRC cases to further neglect.”

I want to direct you to the statement, one, that starts with “I can only speculate”. Is the speculation reasonable that the probabilities are high that Mr Simelane asked you to remove Mr Ackermann?

ADV MPSHE: The speculation as he states for me recalling, is not improbable and I would substantiate that. It is because that that
10 happened to me as well in passing, it was not in a meeting, it was not written anywhere, but I recall I was with Adv Simelane who just remarked to me and said, “Hey Chief, why you are keeping Ackermann there?” So that is why I say that speculation may be closer to what happened.

ADV SALUKAZANA: Certainly.

ADV MPSHE: Ja.

ADV SALUKAZANA: And then we will turn back to your statement, the concluding remarks you make there.

ADV MPSHE: Ja, must I read?

20 ADV SALUKAZANA: Yes, please.

ADV MPSHE: Ja:

“Conclusion

45. For the reasons set out above, I deny that I did anything to stop, suppress, or improperly interfere with TRC-related investigations or prosecutions.

46. I have responded to the allegations in the Rule 3.3 notice as fully as I am presently able to do so on my personal knowledge and on the documents presently available to me.

47. From my knowledge and involvement in the TRC matters, I deny that there was any political suppression or interference with prosecuting any TRC-related matters.”

10 ADV SALUKAZANA: Do you wish to say anything in addition to that?

ADV MPSHE: No.

ADV SALUKAZANA: Thank you.

ADV MPSHE: Unless directed by the Commissioners, I can comment on what they want me to comment on.

ADV SALUKAZANA: Thank you very much.

ADV MPSHE: But I think I stand by that.

ADV SALUKAZANA: Thank you. Chairperson, that is Mr Mpshe's evidence-in-chief.

20 CHAIRPERSON: Thank you, Mr Salukazana. Ms Pillay, are you going to put questions of clarification to Adv Mpshe?

ADV PILLAY: Thank you, Chair. We will not be putting questions of clarification, but we do reserve the right to bring an application to cross-examine which we will be doing shortly.

CHAIRPERSON: Thank you. Ms Rantho?

ADV RANTHO: Thank you, Commissioners. I think my mic is not, it

is on here, it is not. Sorry Commissioners, we have got a challenge with my mic, it does not seem to be working. I thank you, Commissioners. Just a few questions for clarity and Commissioners, I am not aware if, well I just want to confirm if the Secretariat did make available the supplementary affidavit of General Jacobs to the Commission?

CHAIRPERSON: Yes, we have.

ADV RANTHO: And also perhaps to Adv Mpshe?

ADV MPSHE: I do have it.

10 ADV RANTHO: Good afternoon, sir.

ADV MPSHE: Good afternoon, madam.

ADV RANTHO: There is an affidavit of General Jacobs, I think that was put before you and specifically there is a letter attached to it, that SA1 to that affidavit. In essence it is a letter from the Acting National Commissioner at the time, Commissioner Tim Williams, addressed to you. So I would like to confirm if this letter was indeed received by your office, if you have a recollection of this letter from the SAPS?

ADV MPSHE: This very letter?

ADV RANTHO: Ja, it is attached to that affidavit ...[intervenes]

20 ADV MPSHE: There is a letter?

ADV RANTHO: It is attached as SA1, yes. It is dated 7 March 2008.

ADV MPSHE: To Adv Mpshe, Acting Director, is it that?

ADV RANTHO: Yes.

ADV MPSHE: Yes.

ADV RANTHO: That is the one.

ADV MPSHE: As SA1, yes.

ADV RANTHO: Yes.

ADV MPSHE: Yes?

ADV RANTHO: You recall?

ADV MPSHE: If it was referred to me, then it means it was received by my office.

ADV RANTHO: Okay.

ADV MPSHE: Ja.

ADV RANTHO: And again without really delving deeper into the
10 contents of the letter, the first paragraph refers to the ITT meeting
that was scheduled for the 13 March 2008. Do you see that? Just
under the ...[intervenes]

ADV MPSHE: Yes, I see.

ADV RANTHO: Subject.

ADV MPSHE: I see that.

ADV RANTHO: I just want to clarify if that would have or that
accords with what you have just testified on earlier regarding the
invitation that you sent to the SAPS regarding the ITT meeting that
was supposed to be scheduled?

20 ADV MPSHE: Ja.

ADV RANTHO: That talks to that.

ADV MPSHE: Okay. I see the contents thereof, but it does not
trigger my mind.

COMMISSIONER KGOMO: Ja, just speak up, I cannot hear.

ADV MPSHE: Oh, sorry. I said I have just read the contents of the

letter, but it does not trigger my mind as to what is said here, but safe that I did indicate somewhere in my affidavit that I had wanted the Task Team to be...

ADV RANTHO: Put?

ADV MPSHE: To be put back, ja, as he states in his letter.

ADV RANTHO: Thank you.

ADV MPSHE: Ja, that is correct.

ADV RANTHO: Thank you, Adv Mpshe. And then there was a question by Commissioner Gabriel about the turf within the SAPS and
10 the Scorpions?

ADV MPSHE: Ja.

ADV RANTHO: And you remember?

ADV MPSHE: Yes, I do remember.

ADV RANTHO: You recall that you informed the Commissioners that there was an issue about the Scorpions having been trade, I mean trained in Scotland and the packages being better than those of SAPS?

ADV MPSHE: Ja.

ADV RANTHO: And that as you said, may have contributed to sort
20 of a conflict?

ADV MPSHE: Yes.

ADV RANTHO: Between the two institutions?

ADV MPSHE: Yes.

ADV RANTHO: But again I would like to also clarify in relation to the memorandum that is annexed to your affidavit as MJM7, I think

specifically there is a paragraph 3.1 to that memo. That is the memorandum dated 3 March 2009 that is annexed to your affidavit.

ADV MPSHE: Do you want me to go to it?

ADV RANTHO: Yes, for convenience if you may.

ADV MPSHE: Ja, what page is that?

ADV RANTHO: It would be annexure MJM7 to your statement.

COMMISSIONER GABRIEL: 1691.

ADV MPSHE: Thank you.

ADV RANTHO: Oh pages? Thank you, I am indebted,

10 Commissioner.

ADV MPSHE: Thank you, Commissioner. 1691 yes, MJM7?

ADV RANTHO: Correctly so, yes.

ADV MPSHE: Ja.

ADV RANTHO: Paragraph 3.1 of that memo.

ADV MPSHE: Must I read it?

ADV RANTHO: No, no, no, I just want to just refer you to that, where you talk of and that is the memo that you confirmed to the Commissioners that it was signed by you?

ADV MPSHE: Yes.

20 ADV RANTHO: Addressed to the Minister?

ADV MPSHE: Ja.

ADV RANTHO: And what is indicated is that both agencies which now it referred to SAPS and NIA ...[intervenes]

ADV RANTHO: That both agencies indicated their willingness to again participated in the Task Team.

ADV MPSHE: Task Team.

ADV RANTHO: In the context of what you indicated to the Commissioners about the turf that was going on between the SAPS and ...[intervenes]

ADV MPSHE: Yes.

ADV RANTHO: And the Scorpions at the time, I want to understand that your evidence is that notwithstanding whatever conflict that may have prevailed at the time between the two institutions, there was nonetheless willingness on the part of SAPS and NIA to assist?

10 ADV MPSHE: Indeed, indeed, that is correct.

ADV RANTHO: And then also there was an issue that is actually, I think it is if I am not mistaken, is MJMA, but nonetheless, you do not have to go there. That is a memo by Adv Ackermann, I think the one that indicated that SAPS, in fact NPA would not usurp the functions that were reserved for, I think it was [indistinct] ...[intervenes]

ADV MPSHE: SAPS and NIA.

ADV RANTHO: And SAPS and NIA.

ADV MPSHE: SAPS and NIA, yes.

ADV RANTHO: Indeed so, thank you for that.

20 ADV MPSHE: Ja, ja.

ADV RANTHO: And that in light of also what you indicated in paragraph, I think the paragraph of your statement, but I think it is paragraph 39, you spoke of challenges in interdepartmental cooperation and coordination ...[intervenes]

ADV RANTHO: That existed at the time.

ADV MPSHE: Yes.

ADV RANTHO: And to your knowledge, was there any document that related to regulating the relationship between the SAPS and NPA, perhaps in NIA as well insofar as the implementation of these tasks, the tasks assigned to ITT consent that existed maybe?

ADV MPSHE: I do not remember existence of any such document, except that what was between, sorry, or amongst these institutions was for them to conduct their work in accordance with their mandates. For example, the paragraph you quoted right at the
10 bottom, I do not know the page, where I say, "Prosecutors should not be seen to be zapping the paths of SAPS and NIA", we would simply say the prosecutors should not see themselves as NIA or SAPS and do the work that were supposed to be done by SAPS and NIA. That is what I meant.

ADV RANTHO: Okay.

ADV MPSHE: Ja.

ADV RANTHO: Would I be correct in a way, the manner in which the prosecution/investigation of TRC cases was concerned, was done almost in a manner that is not coordinated, so to speak? It was not
20 coordinated, it was not regulated? In other words ...[intervenes]

ADV MPSHE: No, it was not coordinated.

ADV RANTHO: It was not coordinated? Yes.

ADV MPSHE: No, no, no, no.

ADV RANTHO: Okay. And Commissioners, from my side that is about it.

CHAIRPERSON: Thank you, Ms Rantho. Ms Moroka?

ADV MOROKA: No questions of clarification from our side.

CHAIRPERSON: Thank you. From this side, Mr Gwala?

ADV GWALA: No questions, we do not have questions for this witness, Commissioners, thank you.

CHAIRPERSON: Yes. Ms Rikhotso?

ADV RIKHOTSO: Thank you, Commissioner. I do have a few questions of clarification for this witness. May I proceed?

CHAIRPERSON: Yes, you may.

10 ADV RIKHOTSO: Thank you, thank you Commissioner. Adv Mpshe, you near the end of your evidence, you indicated that the speculation by Mr Calata that you had been requested by Adv Simelane to remove Adv Ackermann was ...[intervenes]

ADV MPSHE: No, no, no, no, it is not speculations from me, it is speculations stated in the statement.

ADV RIKHOTSO: Correct.

ADV MPSHE: Yes.

ADV RIKHOTSO: That is the speculation from Mr Calata?

ADV MPSHE: Yes.

20 ADV RIKHOTSO: Correct, but then you indicated that that speculation was not improper?

ADV MPSHE: Yes, correct.

ADV RIKHOTSO: Right. So now you said he had said in passing, "Why are you still keeping Ackermann there?"

ADV MPSHE: That is it.

ADV RIKHOTSO: Do you remember where he said this in passing?

ADV MPSHE: Well the “where” will be in the premises of the NPA in Silverton, but you will remember I said I cannot remember the date and time, but it was not an issue said at the time or within a meeting or a discussion of the PCLU, he just mentioned it in passing to me because he used to call me Chief. He would just say, “Hey Chief, why are you still keeping Ackermann there?” We were walking and that was it.

ADV RIKHOTSO: And could you, I do not know if you, the
10 circumstances that would cause him to ask you such a question, he was DG at the time, am I correct?

ADV MPSHE: Ja.

ADV RIKHOTSO: So is this at the time when the DGs meetings were happening and there was all this acrimonious fighting if I can put it that way between or regarding Ackermann?

ADV MPSHE: Ja, that would be correct and if I may add, in addition to that, I then recalled what Vusi Pikoli would report after attending the meetings of the Task Team, especially where the DGs would be present, that look, Ackermann [vernacular].

20 ADV RIKHOTSO: Mm.

ADV MPSHE: Ja, so when he said it to me now in person, I recalled what Vusi Pikoli had told me.

ADV RIKHOTSO: So would you consider what you, what, the question as to why are you saying ...[intervenues]

CHAIRPERSON: Rikhotso, I think your line of questioning is

bordering on cross-examination, it is no longer clarificatory.

ADV RIKHOTSO: I understand that, Chair.

CHAIRPERSON: Thank you.

ADV RIKHOTSO: Then I will reserve that, those questions for cross-examination.

COMMISSIONER: Ja.

ADV RIKHOTSO: And then, okay yes, just one more thing. Were you ever in any informal meetings with Adv Simelane possibly at airports or garages or any of those places, discussing Ackermann?

10 ADV MPSHE: Discussing Ackermann? No, no, no, not at all.

ADV RIKHOTSO: I have no further clarification questions, I will ...[intervenes]

CHAIRPERSON: Thank you.

ADV RIKHOTSO: Reserve the rest for cross.

CHAIRPERSON: Thank you, Ms Rikhotso. Mr Semenya?

ADV SEMENYA: Chairperson, with your permission and in anticipation of the application by Webber Wentzel to cross-examine, we prefer to defer our questioning after answers to those cross-examination questions have been made.

20 CHAIRPERSON: Thank you. Mr Salukazana, I daresay there is no cross-examination pursuant to the clarification, direct questions that have been posed to Adv Mpshe.

ADV SALUKAZANA: You are correct, Chairperson.

CHAIRPERSON: Thank you.

COMMISSIONER KGOMO: Are you intimidated? [Laughs].

ADV SALUKAZANA: No, no, not at all. [Laughs].

CHAIRPERSON: Adv Mpshe.

ADV MPSHE: Madam?

COMMISSIONER: We thank you for having made yourself available to this Commission for your evidence, hence you may have noted there is an intention to apply for your cross-examination by several parties. Until that has happened, you may be recalled as a witness but for now you are excused as a witness.

ADV MPSHE: Thank you, Chair. Thank you, Commissioners.

10 CHAIRPERSON: Thank you.

NO FURTHER QUESTIONS

ADV SEMENYA: Chairperson, I am advised that the plan to have...

COMMISSIONER: Adv Ntsebeza?

ADV SEMENYA: Adv Ntsebeza and Mr Cajee, we are unable to substitute Mr Ntsebeza with Mr Cajee for tomorrow, he is not available. That puts our calendar in jeopardy somewhat. Consequently we are unable to sit for Wednesday and Thursday. I am corrected, we will sit on Thursday which was as per calendar, the evidence of Mr Cajee.

20 CHAIRPERSON: Yes, so Mr Cajee is unavailable tomorrow morning?

ADV SEMENYA: He is unavailable tomorrow morning in substitution of the evidence, otherwise we ...[intervenues]

CHAIRPERSON: Yes.

ADV SEMENYA: Would have sat for Mr Ntsebeza.

CHAIRPERSON: Yes. Well in as much as we are quite eager to proceed with our proceedings as we have scheduled, we have to postpone these proceedings until Thursday, the 9 April at 10:00 for Mr Cajee's evidence.

ADV SEMENYA: As the Commission pleases.

CHAIRPERSON: These proceedings are adjourned. Thank you, Mr Salukazana.

INQUIRY ADJOURNS UNTIL 9 APRIL 2026

CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

JUDICIAL COMMISSION OF INQUIRY INTO TRC

FORUM OF ORIGIN : Inquiry

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later informed that the Department of Justice failed to file any court documents. The court apparently provisionally withdrew the case against the accused.

The Department of Justice failed to reconvene an amnesty hearing, and the charges were not reinstated against the accused. I was, of course, taken off. Mr Mshea removed me from the TRC cases, and I was informed by McAdam that Mr Mshea had taken over the PEBCO 3 cases. McAdam will be able to shed further light on this case. All I can state is that the case never proceeded, and
10 somewhere I read in a document that a spokesperson of the Department of Justice said that those are one of the cases that fell through the cracks. I think that was the PEBCO matter, because he just disappeared, but Chris will be able to tell us more about the case.

ADV VARNEY: Thank you, Mr Ackermann. I understand that you rely in part on a document. It is a memorandum, an internal memorandum, that you prepared, and you sent it to Dr. Ramaite, as well as advocates Piccoli and Pilay. The subject matter is details of TRC cases closed by the PCLU and the reappointment of Senior Superintendent Britz. It is dated 30 October 2006. Commissioners,
20 that letter we referred to previously.

It is in bundle 1 at page 315. Now, Mr Ackermann, you do refer to the PEBCO 3 case in this internal memo at page 325. I want you to read certain paragraphs into the record. That paragraph falls under a heading on the previous page, at paragraph 2.28, and the heading is The Reappointment of Senior Superintendent Britz. Just

processing of TRC investigations and prosecutions, and nobody did anything about it. That is the thrust of your evidence?

ADV ACKERMANN: No. Only the PCLU was aware of it, Mr Ngcuka was aware of it, Mr McCarthy was aware of it, who else? I did not go to the Commercial Crime persons, there were lots of people, so the whole NPA was not aware of it. But I must say, Macadam and I told everybody that we saw is, that we do not have investigators. I mean, you can just look at all the documents that you have on this matter. I am now talking about Parliament submitting, we are submitting posh
10 to Parliament. We are successful here, because ... (intervenes)

COMMISSIONER KGOMO: Mr Ackermann, Mr Ackermann, the upshot of all these problems is that the investigation and prosecution of these cases were delayed.

ADV ACKERMANN: That is correct.

ADV SONI: And on your version today, this is due to the fact that, or partly due to the fact that a directive issued by the NDPP to provide investigators was not complied with?

ADV ACKERMANN: Correct.

ADV SONI: Throughout your period at the PCLU?

20 ADV ACKERMANN: Correct. I mean, up until 2007, so it is not the whole period, 2007, I did not do any operational matters. I had concerns when I, you saw those letters where I had a meeting with Ramaite, it must have been in 2008, I was then off for a year, but I had concerns about the PEBCO matter, I had concerns about matters not being followed up.