

---

**AFFIDAVIT**

---

I, the undersigned,

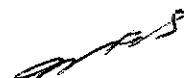
**MOHAMED ENVER SURTY**

state the following under oath -

- 1 I am a former attorney and Member of Parliament (MP). I served as an MP from 1994 until my retirement from public office at the end of the 5<sup>th</sup> democratic Parliament on 6 May 2019. I reside at 26 A First Avenue, Houghton Estate, Johannesburg.
- 2 The contents of this affidavit are within my personal knowledge unless stated otherwise or apparent from the contents. I believe them to be true and correct.

**My background**

- 3 I started my career as a practising attorney in Rustenburg in 1977, initially as a sole practitioner and later in partnership.
- 4 In 1994 I retired from legal practice after being elected to represent the North-West Province in the Senate. I served as the Provincial Whip for the African National Congress (ANC) and as a member of the Select Committees on Security and Justice, and Co-operative Governance and Public Administration. These committees exercised oversight over defence, intelligence, local government, and traditional affairs. Following the adoption of the final Constitution in 1996, I continued in this role in the National Council of Provinces (NCOP).
- 5 Between 1994 and 1996, I served on Theme Committee 4 of the Constitutional Assembly, one of six committees established to draft South Africa's democratic Constitution. The committee was responsible for processing submissions and



negotiating provisions relating to fundamental rights, now contained in Chapter 2 of the Constitution.

- 6 During the same period, I served as Programming Whip in both the Senate and later the NCOP. I also served on the Rules Committee and Joint Rules Committee of Parliament, which were responsible for drafting the rules governing the Senate, the NCOP and the Joint Rules of Parliament.
- 7 During the second democratic Parliament (June 1999 - 13 April 2004) I was elected to the National Assembly. After two weeks I was deployed and elected as Chief Whip of the NCOP, chaired by former Minister Naledi Pandor.
- 8 During the third democratic Parliament (14 April 2004 – 21 April 2009) I was appointed Deputy Minister of Education under Minister Pandor. In October 2008, following the resignation of President Thabo Mbeki, President Kgalema Motlanthe appointed me as Minister of Justice and Constitutional Development. I served in that capacity until May 2009.
- 9 During the fourth and fifth democratic Parliament (April 2009 to 7 May 2019) I served as Deputy Minister of Basic Education for both terms under Minister Angie Motshekga until my retirement from Parliament.

### **The purpose of this affidavit**

- 10 I make this affidavit in response to a request for assistance from the Commission, dated 23 April 2026, requiring me to explain a handwritten note made by me on a memorandum prepared by the then Acting National Director of Public Prosecutions (“NDPP”), Mr Mokotedi Mpshe SC, dated 17 February 2009.
- 11 The request arises from an email I addressed to the Commission on 15 October 2025, in which I stated that I had no engagement whatsoever with either the National Prosecuting Authority (NPA) or the South African Police Service (SAPS) concerning the prosecution of TRC matters.
- 12 At the outset, I place on record that, when I was first approached by the evidence

leader of the Commission, Ishmael Semanya SC, and requested to provide any information in my possession relevant to the Commission's inquiry into alleged political interference in the investigation and prosecution of TRC matters, I did not recall having commented on the memorandum.

- 13 I accordingly informed Mr Semanya that I had not engaged with the NPA or SAPS regarding TRC prosecutions and indicated that all official records would be in the custody of the Department of Justice and Constitutional Development.
- 14 On 23 April 2026, I received a further communication from Mr Semanya attaching a memorandum prepared by the then Acting NDPP, Mr Mpshe. The memorandum was received by the Director General (Mr Menzi Simelane) on 5 March 2009 and passed on to the office of the Deputy Minister of Justice and Constitutional Affairs (Deputy Minister Johnny De Lange) on 11 March 2009. It was transmitted to my office on 17 March 2009 for noting. A copy of the memorandum is attached, marked "A".
- 15 After having reconsidered the memorandum, together with Mr Mpshe's evidence to this Commission on 7 April 2026, I can confirm that the memorandum is authentic and that the handwritten note attributed to me is indeed mine. My failure initially to recall the memorandum was attributable solely to the passage of time and the fact that, at the time, the memorandum did not appear to me to involve anything unusual or contentious.
- 16 I state categorically that during my (brief) tenure as Minister I neither interfered with, influenced nor suppressed any investigation or prosecution, including investigations or prosecutions relating to TRC matters.

### **The memorandum and my comments**

- 17 It is important to distinguish between memoranda submitted for approval and those submitted merely for noting. This memorandum falls into the latter category. Its purpose was not to seek my direction or approval, but to inform me of the Acting NDPP's intention to reconvene the TRC Task Team.




- 18 The memorandum recorded that the work of the TRC Task Team had been delayed, amongst other reasons, by the establishment of the Ginwala Commission. It further recorded that the Ginwala Commission had made no findings affecting the functioning of the Task Team.
- 19 The memorandum also referred to a number of high-profile matters requiring investigation. It recorded that most of those matters required investigation by the SAPS and noted that guidelines formulated during my predecessor's tenure had been declared unconstitutional. Although an appeal against that decision was pending, the memorandum expressly recorded that there was no impediment to investigations proceeding.
- 20 Given the sensitivity of the matters concerned, the memorandum proposed that a risk assessment be conducted by the National Intelligence Agency (NIA).
- 21 As was the established process within the Department of Justice and Constitutional Development at the time, the memorandum was routed through the Director-General (DG) and Deputy Minister before being submitted to me. That process ensured that I had the benefit of their respective views and comments before considering the memorandum.
- 22 The DG at the time, Mr Simelane, recommended that the matter first be discussed within the Inter-Ministerial Committee (IMC) so that the Acting NDPP could be guided in relation to the NPA's mandate. The IMC comprised the Ministers responsible for Justice and Constitutional Development, Police and Intelligence.
- 23 Deputy Minister de Lange's comments are not entirely legible. To the extent that they can be discerned, he appears to have emphasised that the decision whether to prosecute rested with the NPA, while recognising the importance of coordination between the NPA, SAPS and the intelligence services through the Task Team established for that purpose.

- 24 Although no approval was required from me, I nonetheless had to apply my mind to the contents of the memorandum given the significance of the matters addressed in it. It was both customary and appropriate that I be informed of developments concerning matters of this nature.
- 25 My handwritten response reflected three propositions: first, agreement with the Deputy Minister's approach; second, that the investigations should proceed; and third, that the matter could appropriately be discussed at IMC level for purposes of coordination.
- 26 After the passage of so many years, I cannot state with certainty all the considerations that informed my comments at the time. What is clear, however, is that the exclamation mark accompanying my comment that the investigations "must proceed" reflects the strength of my view that the investigations should continue without delay and notwithstanding pending litigation.
- 27 The constitutional position was, and remains, that decisions whether to prosecute vest exclusively in the NPA.
- 28 To the best of my knowledge, the proposed IMC discussion did not take place, no intelligence report was ultimately submitted, and no consultation occurred with either the NIA or the President. This was likely a consequence of the demands associated with the impending general election and my concurrent executive responsibilities.
- 29 The memorandum was submitted shortly before the April 2009 general elections. During that period, I was also engaged, together with the Ministers responsible for Safety and Security and Intelligence, as well as the NPA, in efforts to address violence in northern KwaZulu-Natal ahead of the elections. Those coordinated efforts were directed at ensuring that the elections proceeded freely, fairly and peacefully.
- 30 Upon my appointment as Minister I was also required to address the findings of

the Ginwala Commission concerning the conduct of the then Director-General. Given the seriousness of those findings, I proposed that the matter be referred to the Public Service Commission for investigation. My term of office ended before that process could be finalised.


- 31 Except for what is reflected in the memorandum itself, I do not recall any engagement with the NPA or SAPS concerning TRC prosecutions.
- 32 I reiterate that, during my tenure as Minister, I did not interfere with, influence or suppress any investigation or prosecution, including those relating to TRC matters.



**MOHAMED ENVER SURTY**

Thus signed and sworn to before me at Rustenburg on this 7<sup>th</sup> day of MAY 2026, after the deponent declared that he is familiar with the contents of this affidavit, regards the prescribed oath as binding on his conscience, and has no objection against taking the said prescribed oath, compliance having occurred with the requirements of the regulations contained in Government Gazette R1258 dated 21 July 1972 (as amended).

**Rubeena Adam Soomar**  
 Practicing Attorney  
 Republic of South Africa  
 25 Molen Street,  
 East End, Rustenburg  
 Ex officio Commissioner Of Oaths



**COMMISSIONER OF OATHS**

MJM /

3/16/09

MINISTRY OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT  
PRETORIA

2009-03-17

PRETORIA  
MINISTERIE VAN JUSTISIE EN  
STAATKUNDIGE ONTWIKKELING

DEPUTY MINISTRY FOR JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT  
PRETORIA

2009-03-11

PRETORIA  
DEPUTY MINISTRY FOR JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT

DEPARTMENT OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT  
PRIVATE BAG X61

2009-03-05

PRETORIA 0001  
OFFICE OF THE DIRECTOR-GENERAL

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.

Handwritten signature and initials (RMS) at the bottom right of the page.

- 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

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 *Wakplaas* 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 Mok 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 Pabco 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 NATHAN SHE SC  
 ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS  
 DATE: 03.02.09.

NOTED

*[Handwritten signature]*  
M SIMELANE

DG: DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT  
DATE:

*It may be useful that the Minister first discuss these matters with the TRC Minister so that the acting NPP can be advised how to proceed separately on what the mandate of the NPA is on these matters.*

*[Handwritten initials]*

I find fault with the ap... In fact,  
 in law, NDPP must proceed with presenters or not  
 NOTED... To... this does not take place  
 in isolation, the task team was established,  
 as part of... As this is  
 a... assist

ADV J O'NEILL  
 DEPUTY MINISTER OF JUSTICE & CONSTITUTIONAL DEVELOPMENT  
 DATE:

consultations  
 with NCLF  
 Resident

NOTED

*support his view*

MR ME SURTY, MP  
 MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
 DATE: 2008-07-09

*investigation must  
 proceed!  
 However, matters can  
 be raised in IMC  
 next if.*

*and (15)*