

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

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

STATEMENT: APPLICATION TO CROSS-EXAMINE GEOPHREY LEDWABA

I, the undersigned.

ASMITA THAKOR

do hereby make oath and state that:

1. I am an adult female attorney practising as a Partner at Webber Wentzel at 90 Rivonia Road, Sandton. I am the attorney of record for the families and survivors of apartheid-era crimes (known as the "**Calata Group**") and the former Special Director of Public Prosecutions heading the Priority Crimes Litigation Unit ("**PCLU**"), Advocate 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, 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 Rule 3.7 of the Commission's Rules and Regulations 8(3) of the Commission's Regulations to cross examine Mr Geophrey Ledwaba ("**Mr Ledwaba**" or "**Ledwaba**").

THE APPLICATION

5. Mr Ledwaba filed an affidavit with the Commission. His affidavit is dated 14 April 2026, and he gave oral evidence before the Commission on 22 April 2026.

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6. Our clients wish to put questions to Mr Ledwaba and dispute his evidence in relation to the following aspects arising from his evidence.

The Special National Projects Unit dealing with TRC cases

7. In his statement, Mr Ledwaba states that the Special National Projects Unit ("**SNPU**") within the Directorate of Special Investigation ("**DSO**") had been dealing with the following 14 TRC cases (also attached as MGL1 to Mr Ledwaba's statement):

7.1	<i>"BLACKCATS</i>	<i>Killing of ANC members by IFP in Ermelo.</i>
7.2	<i>COSAS 4</i>	<i>Murder of 4 members of COSAS.</i>
7.3	<i>CRADOCK FOUR</i>	<i>Kidnapping/Murder of ANC members by Security Branch.</i>
7.4	<i>DUBENI</i>	<i>Murder of MK member by SAPS security branch.</i>
7.5	<i>EARLY LEARNING</i>	<i>Investigation: Bombing of early learning centre in Cape Town.</i>
7.6	<i>FIREFLY</i>	<i>Murder and kidnapping of Brian Ngalunga Vlakplaas Askari.</i>
7.7	<i>LUCKY STAR</i>	<i>Investigation into the murder of Apla members.</i>
7.8	<i>MAMELODI TEN</i>	<i>Murder of 10 ANC members by N-TVL security police.</i>
7.9	<i>NELSON SITHOLE</i>	<i>Murder/killing of ANC members by unknown persons.</i>
7.10	<i>PEBCO THREE</i>	<i>Kidnapping/murder of ANC members by SAP security branch</i>
7.11	<i>POWELL</i>	<i>Powell received 70 tons of weapons from Eugene De Kock.</i>
7.12	<i>PROJACK</i>	<i>Assassination of activist Projack in Nyanga.</i>
7.13	<i>STEVE BIKO</i>	<i>Investigation into the murder of Steve Biko by SAP security branch</i>
7.14	<i>TIMOL</i>	<i>Alleged murder of detainee, TIMOL in police detention."</i>

8. Our clients wish to establish from Mr Ledwaba:

- 8.1 under what legal authority, such as a Presidential Proclamation, the SNPU was dealing with the above TRC cases;
- 8.2 when was the audit conducted that identified the cases mentioned above in paragraph 7; and

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- 8.3 whether the SNPU was investigating any other TRC cases apart from the ones mentioned above in paragraph 7.
9. Mr Ledwaba's evidence regarding the number of TRC cases dealt with by the SNPU stands to be tested against the following evidence that is already before the Commission:
- 9.1 According to former NDPP, Advocate Bulelani Ngcuka, stated that after the NPA's Human Rights Investigative Unit ("HRIU") assessed the TRC cases between 1999 and 2000, he decided to transfer all TRC cases in the possession of the HRIU to the SNPU. (Ngcuka statement at para 28).
- 9.2 Around September 2000, the TRC provided a list of approximately 226 TRC cases to the HRIU (Calata Group Bundle Volume 1, para 102 at p 38). It appears that the cases were drawn from the TRC amnesty database, approximately three years before the amnesty proceedings concluded.
- 9.3 According to the former head of the SNPU, Advocate Chris Macadam, by 10 February 2003, the SNPU had identified 41 TRC cases for investigation and possible prosecution (Macadam statement at para 19, Annexure AD1 Macadam Bundle p 1428).

Turf war between the SAPS and DSO

10. In his evidence in chief, Mr Ledwaba stated, with reference to the obligation to investigate TRC cases and the turf war between the SAPS and the DSO, that "everything started" after the final TRC Report was handed to Parliament in March 2003 and following President Mbeki's speech to Parliament on 15 April 2003 (Transcript 22 April 2026, page 17).
11. Our clients wish to know how the turf war between the SAPS and the DSO impacted the TRC cases.

Interpretation of section 28(1)(a) and (b) of the NPA Act

12. In paragraphs 36 and 38 of his statement, Mr Ledwaba incorrectly quotes parts of sections 7 and 28 of the NPA Act which deals with the establishment of

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Investigating Directorates (section 7) and the powers of Investigating Directors to conduct inquiries (section 28). Mr Ledwaba presents the provisions in his statement, and subsequently in his evidence in chief, as if the provisions were in force at the time that the DSO came into operation in 2001. The following are extracted from Ledwaba's statement:

"36. Section 7 of the NPA Act reads thus:

7 Investigating Directorates

(1)

(1A) There is hereby established, in the Office of the National Director, an Investigating Directorate to be known as the Directorate of Special Operations to investigate, and carry out, any functions incidental to investigations-

(a) relating to serious, high-profile or complex corruption, commercial or financial crime and organised crime cases-

(i) referred to the Investigating Director by the National Director in terms of section 28 (1) (b); or

(ii) referred to the Investigating Director in terms of section 28(1)(a) or 28(13)

(b) relating to additional related statutory offences or categories of statutory offences, including contraventions of-

(i) the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);

(ii) the Prevention of Organised Crime Act, 1998 (Act 121 of 1998)."

And:

"38. The authorising sections are quoted below and state thus:

Section 28(1)(a)

If the Investigative director has reason to suspect that a "SPECIFIED OFFENCE" has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she MAY conduct an investigation.

Section 28(1)(b)

If the National Director refers a matter in relation to the alleged commission of a specified offence to the Investigating Director, the Investigating Director SHALL conduct an investigation or a preparatory investigation as referred to in subsection 13, on the matter."

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13. It is to be noted that on 5 December 2000, the NPA Amendment Act 61 of 2000 was assented to by the President to establish the DSO (Ledwaba bundle pp 74 to 91). By amendment to section 7 of the NPA Act, the DSO was established with the aim to:

"1(a) ...

- (i) investigate, and to carry out any functions incidental to investigations;
 - (ii) gather, keep and analyse information; and
 - (iii) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to
 - (aa) offences or any criminal or unlawful activities committed in an organised fashion; or
 - (bb) such other offences or categories of offences as determined by the President by proclamation in the *Gazette*.
- (b) For the purpose of subparagraph (aa), 'organised fashion' includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics."

14. The DSO's mandate was not to investigate and prosecute "*serious, high-profile or complex corruption, commercial or financial crime and organised crime cases*" as alleged by Mr Ledwaba. It will be put to him that the DSO's mandate as set out in section 7(1) of the National Prosecuting Authority Amendment Act 61 of 2000 was to investigate and prosecute offences or any criminal or unlawful activities committed in an organised fashion.
15. In respect of the power of the DSO to conduct inquiries (i.e. investigations and prosecutions), Mr Ledwaba's evidence is that section 28(1)(a) of the NPA Act gave him, as the Investigating Director of the DSO, a discretion to authorise or decline a DSO investigation where a matter fell within what he describes as the DSO's "*core mandate*" or a "*specified case*" as defined by the NPA Act. Mr Ledwaba incorrectly interpreted that mandate as being confined to serious, high profile or complex corruption, commercial or financial crimes, and organised crime-related matters.

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16. By contrast, Mr Ledwaba testified that section 28(1)(b) of the NPA Act gave the NDPP what he described as "*super powers*" to refer matters to the DSO even if they did not fall within the ordinary mandate of the DSO (Transcript 22 April 2026, page 70).
17. In paragraphs 61 to 68 of his statement, Mr Ledwaba recalls the various requests that Advocates Macadam and Ackermann of the PCLU made to him for the appointment of DSO investigators to TRC cases:
 - 17.1 The first request for DSO investigators was made by Adv Macadam in May 2003. This request was made under section 28(1)(a) of the NPA Act. Mr Ledwaba advised Adv Macadam that he (Ledwaba) had no authority to assist under section 28(1)(a), and that the proper route was to approach the NDPP under section 28(1)(b).
 - 17.2 On or about 15 July 2003, Advocates Macadam and Ackermann again requested Mr Ledwaba to assist the PCLU with the investigation of TRC cases by declaring them as DSO projects. Mr Ledwaba provided the same response.
 - 17.3 Mr Ledwaba alleged that the interpretative disagreement must be understood against the background of his professional relationship with the Advocates Macadam and Ackermann. He stated that previously they were senior to him but by 2003 he was senior to them and they were not willing to accept advice from someone who they regarded as their junior.
 - 17.4 Mr Ledwaba states that eventually the penny dropped in December 2003, and the two Advocates followed his previous advice and approached NDPP Ngcuka under section 28(1)(b).
18. Our clients wish to question Mr Ledwaba on his interpretation of sections 28(1)(a) and (b) of the NPA because we understand that both sections use the same statutory threshold, namely a "*specified offence*".
19. This issue was raised directly by Commissioner Gabriel, who put it to Mr Ledwaba that if the NDPP could form the view that the TRC matters were

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"specified offences" for purposes of section 28(1)(b), it was not clear why Mr Ledwaba did not form the same view for purposes of section 28(1)(a). Mr Ledwaba's answer was that this was how the DSO interpreted its mandate at the time (Transcript 22 April 2026, page 97 to 100). Our clients wish to establish whether Mr Ledwaba accepts that section 28(1)(b) did not dispense with the requirement that the matter referred by the NDPP must relate to a *"specified offence"*.

20. It will be put to Mr Ledwaba that the true distinction between sections 28(1)(a) and 28(1)(b) is not the nature of the offence, but rather the person who initiates the process and the consequences of that initiation.
21. It will be put to Mr Ledwaba that his interpretation improperly elevated an internal DSO understanding above the wording of the NPA Act. It will further be put to him that an internal administrative understanding could not lawfully narrow the statutory powers conferred by section 28.
22. If TRC matters could be treated as *"specified offences"* when referred by the NDPP under section 28(1)(b), then they were not legally incapable of being treated as *"specified offences"* by the Investigating Director under section 28(1)(a). It will be put to Mr Ledwaba that his explanation on those sections were illogical and consequently frustrated the investigation of the TRC cases.

Section 28(1)(b) issued directives from the NDPP authorising DSO investigations

23. In paragraphs 78 to 81 of his statement, Mr Ledwaba said that Mr Ngcuka acting in terms of section 28(1)(b) on 8 December 2003 authorised investigations in the following matters (also set out in annexure MGL4 of Mr Ledwaba's affidavit):
 - 23.1 the Pebco 3 matter;
 - 23.2 the Brian Ngulunga matter;
 - 23.3 the Motherwell 4 matter; and
 - 23.4 the Chikane matter.

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24. Mr Ngcuka also issued a further directive on 26 February 2004, in terms of section 28(1)(b), directing Mr Ledwaba to investigate two matters (set out in annexure MGL5 of Mr Ledwaba's affidavit) :

24.1 the St James matter; and

24.2 the Heidelberg Tavern matter.

25. It appears that little or nothing was done to progress the matters, notwithstanding the issuing of the two directives in terms of section 28(1)(b) of the NPA Act. Our clients wish to know why Mr Ledwaba did not follow up on the progress of these cases.

25.1 Out of the 6 cases only the Chikane matter proceeded. According to Adv Ackermann this matter was previously investigated and was ready to proceed in 2004 but was halted following the intervention of the Minister of Justice in November 2004. A plea and sentence agreement was struck in 2007.

25.2 The PEBCO 3 matter remains unfinalized today, some 23 years after the proclamation was issued, notwithstanding the issuing of an indictment in 2004. All suspects bar one have died. An inquest is scheduled to take place in October 2026.

25.3 The Brain Nqulunga matter was only referred to the DPCI on 17 May 2021 (DPCI PowerPoint presentation to the Justice Portfolio Committee, dated 20 May 2025), and a decision to re-open the inquest was recommended. The matter is listed under "Other Decisions/Pending Inquests" (Annexure G Adv Shubnum Singh's affidavit at p 395).

25.4 The accused in the Motherwell 4 matter were charged and convicted in 1996, years prior to the NDPP's proclamation. It appears that the investigation arising from this case was the role of former police General Nick van Rensburg in ordering the killing of the Motherwell 4 (Macadam bundle p 1458). There is no evidence that this investigation proceeded.

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- 25.5 In relation to the Heidelberg Tavern and the St James Church Massacre matters, Adv Macadam in an email dated 10 December 2008 to Dr Ramaite (annexure MJM6 of Adv Mpshe statement at p 1688) reported that SAPS still had to conduct a series of investigations. This is approximately four years after Mr Ngcuka issued the second directive authorising the DSO to investigate the matters.
26. It will be put to Mr Ledwaba that, notwithstanding the two section 28(1)(b) directives issued by Mr Ngcuka, save for the Chikane matter which did not require further investigation, the cases were not in fact investigated by the DSO.
27. It will be put to Mr Ledwaba that the real reason these cases did not progress was because of the moratorium imposed by Minister Mabandla on the investigation and prosecution of TRC cases during 2004, pending the finalisation of the NPA's special approach to the TRC cases (amending the Prosecution Policy).
28. Our clients wish to establish whether Mr Ledwaba received any progress reports, whether formal or informal, in relation to each of the six matters.
29. We wish to enquire from Mr Ledwaba whether there was a duty on him to receive reports on the progress of the aforesaid investigations. Mr Ledwaba stated in his evidence in chief that reporting was "informal" and that although the matters were DSO projects, they remained "the baby of the National Director" (Transcript 22 April 2026, bottom of page 94 and beginning of page 95).
30. Our clients wish to establish how Mr Ledwaba reconciles this evidence with his role as Head of Operations and Investigating Director of the DSO. If the matters were authorised as DSO projects and placed within the DSO project-management system, our clients wish to understand why there was no formal reporting to him, or to any other DSO official responsible for operational oversight.
31. Our clients wish to know whether there was any written policy, directive, project-management rule, reporting protocol, memorandum, or practice note regulating progress reports for section 28(1)(b) investigations or DSO investigations more

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generally. If there was no such policy or protocol, our clients wish to establish how the DSO would ensure that these investigations involving very serious crimes were being attended to.

Establishment of the PCLU and handover of TRC cases to the PCLU

32. In his statement, Mr Ledwaba states that, following the NDPP's decision to declare TRC cases as priority crimes that would fall under the PCLU, all TRC cases located within the SNPU were transferred to the PCLU. This meant that the DSO was no longer responsible for the investigation of TRC cases.
33. Mr Ledwaba relies on his memorandum of 15 July 2003 addressed to CIO Leask (annex MGL2 to Ledwaba's statement) records that:
 - 33.1 Ledwaba decided that SAPS should take over all the TRC cases that were handled by the SNPU (para 38.1 of his statement);
 - 33.2 The SNPU files were to be closed off;
 - 33.3 All material was to be given to the PCLU;
 - 33.4 The storeroom used for TRC material was given to the PCLU;
 - 33.5 Two SNPU researchers would be transferred to the PCLU.
34. It will be put to Mr Ledwaba that the handover from the SNPU to the PCLU created an obvious operational gap. While the TRC dockets and files, and two researchers were transferred to the PCLU, and even though the PCLU had investigative capacity, no investigators were transferred to the PCLU.
35. In paragraphs 43 and 44 of his affidavit Mr Ledwaba states that the Presidential Proclamation which created the PCLU mandated it to "direct investigations and prosecutions in relation to various priority crimes". From this, Mr Ledwaba concludes that the PCLU was "therefore clothed with both investigative and prosecutorial powers."
36. Our clients' wish to question Mr Ledwaba's interpretation of the Proclamation. The Proclamation appears to have authorised the PCLU to manage, direct and

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supervise investigations and prosecutions in relation to identified priority crimes. It did not constitute the PCLU as an investigative directorate equivalent to the DSO, nor did it appoint investigators to the PCLU.

37. It will be put to Mr Ledwaba that the correct interpretation of the Proclamation is that the PCLU was empowered to direct and manage investigations and prosecutions in relation to priority crimes, but that the actual investigative work had to be performed by investigators from SAPS and/ or the DSO.
38. It will also be put to Mr Ledwaba that Mr Ngcuka's declaration of TRC cases as priority crimes to be dealt with by the PCLU did not mean that the DSO must stop investigating TRC cases. There was no direction from the NDPP that the DSO must cease its work on the TRC cases.
39. In paragraph 45 of his statement, Mr Ledwaba states that it was the understanding "discussed in the NPA EXCO Management meetings", where Dr Ramaite was in attendance, that investigations of PCLU cases would be conducted by SAPS in accordance with SAPS' constitutional mandate. Our clients wish to establish when this NPA EXCO Management meeting, or meetings, took place and whether there are any minutes or records.

CONCLUSION

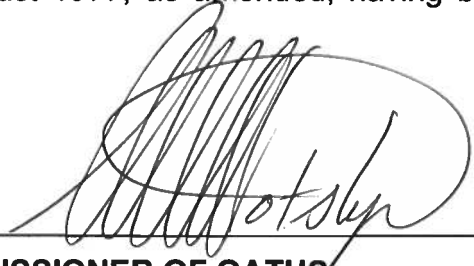
40. The issues outlined above lie at the heart of the Commission's terms of reference and must be contested through cross-examination.
41. It is in the best interests of the work of the Commission that the Calata Group's Counsel be permitted to cross-examine Mr Ledwaba.
42. In the light of the above, I humbly request the Chairperson to permit counsel for the Calata Group and Ackermann SC to cross-examine Mr Ledwaba.



ASMITA THAKOR

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The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Sandton on 25 June 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: **MOJALEFA CLIFTON MOTSHEPE**
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AT

**IN 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 COMMISSION)**

HELD AT:

Sci-Bono Discovery Centre, Corner Mirriam Makeba & Helen Joseph Street,
Newton, Johannesburg

BEFORE

The Honourable Justice Sesi Khampepe (Judge RTD) – Chairperson
The Honourable Justice Frans Diale Kgomo (Judge President RTD)
Advocate Andrea Gabriel (SC)

AFFIDAVIT OF MALALA GEOPHREY LEDWABA

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I, the undersigned,

MALALA GEOPHREY LEDWABA

do hereby state under oath as follows:

1. I am an adult male currently residing at Newlands Village, Gamashashne, Limpopo.
2. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.
3. I make this affidavit for the purpose of assisting the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts to Stop the Investigations or Prosecution of Truth and Reconciliation Commission Cases ("the Commission") in its mandate under the Terms of Reference (ToR). The Commission is to establish whether there were any attempts to interfere with or stop the investigation and prosecution of the TRC cases by the South African Police Service or the National Prosecution Authority.
4. This affidavit is also aimed at addressing the allegations against me as contained in the Notice in terms of Rule 3.3 of the Commission's Rules dated 24 October 2025.
5. I have structured my affidavit as follows:

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- 5.1 first, I provide my educational and professional background;
- 5.2 second, I deal with the structure of the National Prosecuting Authority (NPA) (and specifically the Directorate of Special Investigation (the DSO) at the relevant period of the Terms of Reference of the Commission;
- 5.3 third, I deal with my position as the Head of Operations in the DSO with reference to the applicable legislation;
- 5.4 fourth, I address the mischaracterisation of my response to the removal of TRC Cases from the DSO's SNPU to the PCLU;
- 5.5 fifth, I address the repeated and misguided requests by the PCLU in terms of the NPA Act, and
- 5.6 finally, I address the allegations against me as contained in the Notice in terms of Rule 3.3 of the Commission's Rules, received from the Commission on 24 October 2025.

MY EDUCATIONAL AND PROFESSIONAL BACKGROUND

6. I hold a B.luris degree from the University of the North which I obtained in 1989 and an LLB degree from the University of the North obtained in 1992. I also hold an LLM degree (Law of Contract) from the University of Pretoria obtained in 1997 and a Masters in Business-Leadership degree obtained in 2003 from the University of South Africa.

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7. In 1985, I joined the then Department of Justice as a clerk in the Lebowakgomo Magistrates Court. The then Department of Justice of the Lebowa Homeland Government encompassed the Finance and Home Affairs Departments. I was involved in the administration of estates, maintenance claims, registration and licensing of cars, payment of government taxes (Lebowa government), registration of births and death certificates, passports and travelling documents.
8. In 1987 I became a clerk of the Court and a Court Interpreter and later a Sheriff of the Court.
9. After graduating with a B.luris in 1989 from UNISA, I began practising as a Prosecutor at the Lebowakgomo Magistrate Court. I then transferred to the Mankweng Magistrates Court in 1991, to complete my LLB degree, as the Court was just a kilometre away from the University of the North.
10. In 1992, I completed my LLB-degree, and continued as prosecutor at the same Mankweng Magistrate Court.
11. I was promoted and transferred in 1993 to a Regional Court Prosecutor at the Polokwane Regional Court. I was the first black prosecutor in the Polokwane Regional Court. I remained in that position until December 1994.
12. I was admitted as an advocate of the High Court, Pretoria in 1994.

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13. In 1995, I was appointed as a Junior State Advocate within the Attorney General's Office in Pretoria. I was one of the first black State Advocates in the office of the Attorney General's Office, after the end of apartheid.
14. In 1997, I was promoted to the position of Senior State Advocate and in 2000, to the position of Deputy Director of Public Prosecutions in Pretoria reporting to Dr D'Olliviera, the then Attorney General.
15. In 2001, I was transferred to the Directorate of Special Operations (the "DSO", colloquially known as the "the Scorpions"). I retained my position and rank as a Deputy Director of Public Prosecutions and joined Advocate Sonn and Advocate Leonard McCarthy at the DSO. They were reporting to the then NDPP, Advocate Bulelani Ngcuka.
16. At the DSO I was the Head of the Organized Crime Desk, a position I occupied until February 2003. On 1 March 2003, I was appointed as Investigative Director\Head of Operations/Deputy Head of the DSO. Advocate McCarthy was promoted to Head of the DSO after Advocate Sonn left the DSO. I occupied this position until my resignation in December 2004.
17. In January 2005, I began serving pupillage at the Johannesburg Society of Advocates (the JSA). Towards the end of January 2005, Advocate Pikoli ("Pikoli") invited me to withdraw my resignation and I agreed. I then rejoined the DSO in February 2005 as Investigative Director, a position I occupied until 30 June 2005, after which period I continued my pupillage programme with the JSA.

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18. I continued my pupillage and passed. I then joined the Duma Nokwe Group, a group of advocates under the auspices of the JSA.
19. I was struck off the roll of advocates in October 2014 after criminal charges of theft and fraud. I was subsequently acquitted of all the charges by the High Court, with the two Judges even making serious adverse criticisms against the prosecutors who handled my trial and expressly finding that the facts never established a commission of any offence.
20. I am currently unemployed.

**THE STRUCTURE OF THE NATIONAL PROSECUTIONS AUTHORITY AND
THE DIRECTORATE OF SPECIAL OPERATIONS ("THE SCORPIONS")**

21. The Directorate of Special Operations (DSO), commonly known as the Scorpions, was a specialized unit of the National Prosecuting Authority of South Africa formed by the South African Parliament in 1998. It was tasked with investigating and prosecuting high-level and priority crimes including organised crime and corruption. It was an independent and multidisciplinary unit with a unique methodology which combined investigation, forensic intelligence, and prosecution.
22. The NPA was headed by Advocate Ngcuka who had four Deputy National Directors of Public Prosecutions who reported to him. There was the Division: National Prosecutions Services (NPS) which was responsible for the day-to-day

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prosecution of cases (District Courts, Regional Courts and High Courts) headed by Advocate Jan Henning; the second Division was the Asset Forfeiture Unit headed by Advocate Willie Hofmeyr. The third Division dealt with all the specialized divisions, namely, Priority Crimes Litigation Unit (PCLU), Specialised Commercial Crimes Unit (SCCU), Sexual Offences and Community Affairs Unit (SOCA), headed by Advocate Dr Silas Ramaite SC. The fourth Division, was the Directorate of Special Operations, headed by Advocate McCarthy.

23. The DSO operated along a model of four desks. The first desk was the Financial Crimes Desk and the second the Public Corruption Desk. The third was the Prevention of Organised Crime Desk and the fourth was the Organised Crime Desk, then headed by me.
24. The DSO operated on a so-called proactive troika methodology type of investigation. This meant a complete integration of investigators and prosecutors being designated on each project (sometimes with accountants and other experts where needed) on each of the authorised projects.
25. In March 2003, I was appointed as Deputy Head of the DSO, overall, in charge of all the investigations and prosecutions. Investigations and Prosecutions had subdivisions, the main ones being the five regional offices based in the provinces, namely Gauteng, Western Cape, Eastern Cape, KZN and Free State.
26. At the Head Office, we had a Crime Analysis Division (CAD) and the Special National Projects Unit (SNPU). There were also Ad Hoc Projects as well as the

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Crimes Intelligence Collection Unit (CICU). There were also the Human Resource and the Training Departments of the DSO.

27. The SNPU was first developed and located in the NDPP's Office which included Advocate Chris Macadam ("Macadam"), with whom I dealt with on some TRC Cases. The SNPU later formed part of the DSO and was reporting to me.
28. After the TRC had handed its final Report to Parliament in March 2003, and following President Thabo Mbeki's speech on 15 April 2003 to the Joint Sitting of Parliament, the handling of TRC Cases was handed over to the NPA.

The Turf War Between the DSO and SAPS

29. Prior to my appointment as Deputy Head of DSO in March 2003, there existed some power struggle (so-called turf war) between the DSO and SAPS over exactly which cases were to be investigated by the DSO and which ones were to be investigated SAPS. I was even part of the management meetings between the DSO and SAPS where proper lines of the type of cases to be investigated by the DSO, as per their mandate, were agreed.
30. My understanding then was that the mandate of the DSO was to investigate complex high-profile matters of financial crimes, corruption and organised crime.
31. The DSO created criteria for intake of cases. The cases were to be assessed by a project management office which received and registered all DSO matters referred for consideration.



32. The project management office would then direct each matter to the relevant desk. After consideration, the relevant Deputy would make a recommendation and submit the matter for my final decision. Each project from all the five regional offices and those at Head Quarters was allocated a unique reference name and file number.

MY POSITION AS THE HEAD OF OPERATIONS AT THE DSO FROM 2003 TO 2005

33. I was the Head of Operations of the DSO from 1 March 2003 until 30 June 2005. I deem it necessary to refer the Commission to the applicable legislative provisions regulating the parameters of my functions then. This is to enable the Commission to locate the misguided allegations made by the Calata Group and Advocates Ackermann SC and Macadam that I stopped the investigation and prosecution of TRC Cases. Understanding my role within the confines of the law, will provide much needed clarity.
34. My position as Head of Operations was regulated by the National Prosecutions Authority Act, 32 of 1998. The NPA Act gives effect to section 179 of the Constitution. At all material times, I was obligated to carry out my functions in line with the Constitution, the NPA Act and the existing NPA policies. Overarchingly, I was to act independently and without fear or favour.
35. The position of Head of Operations was introduced into the NPA Act through an amendment of the Act in 2000. The amendment reflects as follows:

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Amendment of section 1 of Act 32 of 1998

2. Section 1 of the principal Act is hereby amended— (a) by the insertion after the definition of “Director” of the following definitions:

‘Directorate of Special Operations’ means the Directorate of Special Operations established by section 7(1)(a);

‘head of an Investigating Directorate’ means the Deputy National Director referred to in section 7(3)(a), or an Investigating Director referred to in section 7(3)(b), as the case may be.

‘Investigating Director’ means a Director of Public Prosecutions appointed under section 13(l)(b), 13(l)(aA) or (b) to the Directorate of Special Operations; or as the head of an Investigating Directorate established in terms of section 7(1 A).

36. Section 7 of the NPA Act reads thus:

7 Investigating Directorates

(1)

(1A) There is hereby established, in the Office of the National Director, an Investigating Directorate to be known as the Directorate of Special Operations to investigate, and carry out, any functions incidental to investigations-

(a) relating to serious, high-profile or complex corruption, commercial or financial crime and organised crime cases-

(i) referred to the Investigating Director by the National Director in terms of section 28 (1) (b); or

(ii) referred to the Investigating Director in terms of section 28(1)(a) or 28(13)




(b) relating to additional related statutory offences or categories of statutory offences, including contraventions of-

(i) the *Prevention and Combating of Corrupt Activities Act, 2004* (Act 12 of 2004);

(ii) the *Prevention of Organised Crime Act, 1998* (Act 121 of 1998).

37. As the Head of Operations and Investigating Director, I was the only person who could authorise an investigation in terms of sections 28(1)(a) and 13 of the NPA Act.
38. The authorising sections are quoted below and state thus:

"Section 28 (1)(a):

*If the Investigative director has reason to suspect that a "SPECIFIED OFFENCE" has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she **MAY** conduct an investigation.*

*Section 28 (1) (b): If the National Director refers a matter in relation to the alleged commission of a specified offence to the Investigating Director, the Investigating Director **SHALL** conduct an investigation or a preparatory investigation as referred to in subsection 13, on the matter.*

*Section 28(2)(d): If the Investigative Director, at any time during the conduct of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the Investigating Director concerned, he or she **MUST** without delay, inform the National Commissioner of the SAPS of the particulars of such matter.*

Section 28(13): "If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are



reasonable grounds to conduct an investigation in terms of section 28(1)(a), the Investigating Director MAY hold a preparatory investigation.”

39. Special Offences are defined in the NPA Act as “any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters as contemplated in section 7 (1). As indicated in the preceding paragraphs, section 7 (1) offences *relat[ed] to serious, high-profile or complex corruption, commercial or financial crime and organised crime cases and those relating to the Prevention and Combating of Corrupt Activities Act, 12 of 2004 and the Prevention of Organised Crime Act, 121 of 1998.*
40. The NDPP saw it fit in April 2003, to declare all TRC Cases “*priority crimes*” and place them within a newly established Unit called the Priority Crimes Litigation Unit (PCLU). The PCLU was established in terms of a Presidential Proclamation in March 2003. It was responsible for certain identified “*priority crimes*”.
41. The decision by the NDPP to declare the TRC Cases as “*priority crimes*” falling under the PCLU, was endorsed by NPA EXCO Management and became policy of the NPA.
42. Following this new policy, it was agreed that all the TRC Cases that were located within the SNPU of the DSO had to be transferred to the new PCLU. As indicated, the PCLU reported directly to Dr Silas Ramaite. The DSO was therefore not responsible for the investigation and prosecution of TRC Cases.

43. The Presidential Proclamation which created the PCLU was made on 23 March 2003. According to this proclamation, the PCLU was mandated "to direct investigations and prosecutions" in relation to various "priority crimes", including serious national priority crimes, such as terrorism, sabotage, high treason, sedition, and international crimes.
44. The PCLU was therefore clothed with both investigative and prosecutorial powers. The challenge however was that no specific investigators were employed or assigned to the PCLU from its inception.
45. It was however the understanding as discussed in the NPA EXCO Management meetings, where Dr Ramaite was in attendance that the investigation of the PCLU Cases would be done by the South African Police Services ("**SAPS**"), in accordance with the constitutional mandate of the South African Police Services.
46. The Calata Group in their papers alleged that when the PCLU through Advocates Macadam and Ackermann approached de Beer, who was the Divisional Commissioner of the South African Police Service, Mr de Beer advised them that the NDPP, Advocate Bulelani Ngcuka must approach President Mbeki for a decision on who should investigate the TRC Cases between the DSO and SAPS.
47. In his testimony before this Commission, Advocate Ngcuka said that there was no need for him to approach the President, as all the TRC Cases under the mandate of the PCLU would be investigated by SAPS.



48. All PCLU cases were investigated by SAPS and none were ever declared or investigated as a DSO project. I was aware that those cases included the following PCLU matters:

48.1 **STATE versus GEISSER & WISSER:** This was a matter investigated by SAPS and managed by SNPU. It involved nuclear weapons-grade uranium enrichment plant to Libya. SAPS arrested the Directors of KIRSCH ENGINEERING (PTY) LTD, and matter was prosecuted by PCLU in Pretoria High Court.

48.2 **STATE versus ASHER KARN:** This matter was also investigated by SAPS in Cape Town and managed by PCLU. The investigation dealt with import of nuclear devices to South Africa.

48.3 There were also other Foreign Military Assistance cases such as the arrest of SA citizens in Zimbabwe and Equatorial Guinea that were investigated by SAPS and prosecuted by PCLU.

49. In line with the above NPA Policy and the mandate of the PCLU to investigate priority crimes including the TRC Cases, the Head of the DSO, Advocate McCarthy confirmed that all TRC Cases that were within the DSO were to be transferred and formally handed over to the PCLU. This discussion occurred at the same time when I signed my performance contract with Advocate McCarthy. Therefore, the TRC Cases, save only the two matters that Advocate McCarthy insisted I, as Head of the DSO attend to them, were further not included as




performance indicators to be measures for the purpose of my employment contract.

50. I requested the Project Management office of Chief Investigating Officer (CIO) Mr Jonker to provide the DSO Management with an audit of all matters that had been investigated and dealt with by the SNPU.

51. Mr Jonker, prepared the audit and I attach Annexure "MGL1", as the list of all SNPU Cases then. The matters are as follows:

51.1 CICU AND SNPU PROJECTS

51.1.1 Project Billabong.

51.1.2 Project Dog.

51.1.3 Project Dragon Chaser.

51.1.4 Project Moamba.

51.1.5 Project Otway.

51.1.6 Project Yorgurt.

51.1.7 Project Kanyisa.

51.1.8 Project Technikon NW.

51.1.9 Project Southern Ambition.

51.1.10 Project Quanxi.

51.2 SNPU TRC CASES

51.2.1 BLACKCATS *Killing of ANC members by IFP in Ermelo.*



- | | | |
|---------|-------------------------------|---|
| 51.2.2 | COSAS 4 | <i>Murder of 4 members of COSAS.</i> |
| 51.2.3 | CRADOCK FOUR | <i>Kidnapping/Murder of ANC members by Security Branch.</i> |
| 51.2.4 | DUBENI | <i>Murder of MK member by SAPS security branch.</i> |
| 51.2.5 | EARLY LEARNING | <i>Investigation: Bombing of early learning centre in Cape Town.</i> |
| 51.2.6 | FIREFLY | <i>Murder and kidnapping of Brian Ngalunga Vlakplaas Askari;</i> |
| 51.2.7 | LUCKY STAR | <i>Investigation into the murder of Apla members.</i> |
| 51.2.8 | MAMELODI TEN | <i>Murder of 10 ANC members by N-TVL security police.</i> |
| 51.2.9 | NELSON SITHOLE | <i>Murder/killing of ANC members by unknown persons.</i> |
| 51.2.10 | PEBCO THREE | <i>Kidnapping/murder of ANC members by SAPS security branch.</i> |
| 51.2.11 | POWELL | <i>Powell received 70 tons of weapons from Eugene De Kock.</i> |
| 51.2.12 | PROJACK | <i>assassination of activist Projack in Nyanga.</i> |
| 51.2.13 | STEVE BIKO | <i>Investigation into the murder of Steve Biko by SAPS security branch.</i> |
| 51.2.14 | TIMOL | <i>Alleged murder of detainee, TIMOL in police detention.</i> |
| 51.3 | CLOSED FILES | |
| 51.3.1 | Project Catcha | <i>Selling of case dockets by prosecutors.</i> |
| 51.3.2 | Project Final Curtains | <i>Investigation into hijacking syndicate.</i> |





51.3.3 **Project Hurricane** *Murder of traffic officer.*

51.3.4 **Project Mossaфра** *Contravention of Foreign Military Act.*

51.3.5 **Project Observatory** *Legal opinion on the appointment of a Senior Counsel (SC).*

51.3.6 **Project Oxwhich** *Car hijacking syndicate, and*

51.3.7 **Project Thorn** *Investigation into contravention of Foreign Military Act.*

52. In line with my understanding of the NPA policy, I formally and officially transferred all TRC Cases within the SNPU of the DSO to the PCLU.
53. On 15 July 2003, after I had transferred the TRC Cases to the PCLU, I issued two memoranda; one addressed to the Head of SNPU, Advocate Obed Tongwane and another to the Chief Investigating Officer within the DSO, Mr Andrew Leask. I have been unable to locate the memoranda I addressed to Advocate Tongwane. My memoranda to Mr Leask, is annexed hereto as annexure "**MGL2**".
54. The memo to Leask (**MGL2**) reads as follows:

"1 Due to the recent creation of the PCLU, it has become necessary to redefine the mandate and operations of the SNPU as follows:

i) TRC Cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used.




Notwithstanding the above decision Adv Tongwane must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators, and you are accordingly authorized to conduct the necessary handovers.

ii) Operation Sunflower

Advocate Macadam will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

iii) Operation Black Widow

Advocate Tongwane must oversee the finalisation of the investigation and conduct the prosecution which may arise.

iv) Operation Final Curtain

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv Ackermann. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

v) Foreign Mercenaries

Adv Pretorius has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv Ackermann."

55. It is clear from the above memorandum that neither myself as Head of the DSO Operations, nor the DSO stopped the investigation and prosecution of TRC Cases. Instead, I merely complied with the NPA policy at the time and transferred the TRC Cases to the PCLU.
56. It is also evident from my memo that I was concerned that the PCLU be assisted through a proper handover. I even went further in my assistance to the PCLU, by transferring two researchers who were located within the DSO and who had been

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dealing with TRC Cases, amongst other matters, to the PCLU. This was to ensure that they continue with assistance.

57. I also made it very clear to Mr Leask that his handover must assist the PCLU by ensuring that the DSO investigators who were charged with the investigation of TRC Cases, introduce witnesses to the SAPS investigators who were to take over the TRC Cases in their assistance with the investigation of the TRC Cases.

The Calata Group have Mischaracterised my Instructions to Advocate Tongwane and Mr Leask in the memoranda of 15 July 2003 as a decision to stop the Investigation of TRC Cases

58. As indicated in the preceding paragraphs, my decision to transfer all TRC Cases to the PCLU flowed from the NPA Policy, beginning with the Presidential Proclamation creating the PCLU, the decision of Advocate Ngcuka, who was the then NDPP to declare all TRC Cases as "*priority crimes*" and falling within the PCLU. This meant that the DSO had to transfer these matters to the PCLU.
59. The Calata Group, in the founding affidavit of Mr Lukhanyo Calata have regrettably taken my memoranda to Mr Leask out of context and mischaracterised it as a '*remarkable decision by the DSO to stop the investigation of TRC cases*'.
60. Neither myself nor the DSO stopped the investigation of the TRC Cases. My memoranda to Mr Leask as Chief Investigating Officer within the DSO contained



a decision I took, in line with the Presidential Proclamation and the declaration by Advocate Ngcuka, the then NDPP that all TRC Cases were "*priority crimes*" falling within the PCLU.

**THE REQUESTS BY THE PCLU'S ADVOCATES ACKERMANN SC AND
MACADAM FOR DSO ASSISTANCE**

61. In May 2003, Advocate Macadam, in his capacity as Deputy Director in the PCLU filed applications with my office requesting that I declare certain TRC Cases as 'projects' under section 28(1)(a) of the NPA Act, in order for the TRC Cases to be investigated by the DSO.
62. This request fell outside the authority I held as Head of Investigations under the NPA Act as fully detailed in the preceding paragraphs. I advised Advocate Macadam of my position as determined by the NPA Act and that I could not assist him. However, I did point him to section 28(1)(b) of the NPA Act and advised him that it may be prudent for him to approach the NDPP with his request. Advocate Macadam was of the view that my interpretation of the NPA Act was wrong and was unwilling to heed my advice at that stage; that is in May 2003.
63. Again on or about 15 July 2003 and at the request of the PCLU's Advocates Ackerman and Macadam, a meeting was held in my office. In that meeting, Advocates Ackerman SC and Macadam requested me again to assist the PCLU with the investigation of TRC Cases, using the legislative process of declaring certain matters as '*projects*' in terms of the NPA Act.

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64. I advised them that I was unable to assist them.
65. Advocate Macadam, in his affidavit filed with this Commission described our meeting as unpleasant. In my view, the meeting was not unpleasant. I merely communicated that I would not authorise the applications in terms of section 28(1)(a). Advocate Macadam was unhappy that I declined his request. Again, in that meeting, I emphasised that the section 28(1)(b) avenue remained an option for the PCLU.
66. The unhappiness over my decision and interpretation of the NPA Act is grounded in the context of my professional journey within the NPA. Advocates Macadam and Ackerman SC were much senior to me when I joined the Attorney General's office in 1995. Advocate Ackerman SC was a Deputy DPP and was above my level of seniority. Advocate Macadam was also senior to me.
67. In 2003 however, I became their senior. It appeared to me that both Advocates Ackermann SC and Macadam were not willing to accept advice from someone they still regarded as their junior.
68. It is unfortunate that Advocates Ackermann SC and Macadam did not follow my advice. However, in December 2003, it appears to me that the penny did finally drop and they then approached the NDPP, Advocate Bulelani Ngcuka in terms of section 28(1)(b), as I had advised them in May 2003, July 2003, and November 2003 respectively.

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THE NOTICE IN TERMS OF RULE 3.3 OF THE COMMISSION'S RULES

69. On 24 October 2025, the Commission sent me a Notice in terms of Rule 3.3 of the Commission's Rules. I attach this Notice as annexure "**MGL3**". The Notice referred me to certain paragraphs of the Calata affidavit where I am implicated.
70. Below, I deal with the allegations as contained in the Rule 3.3 Notice, insofar as those allegations have not been explained in the preceding paragraphs.
71. It is incorrect that the DSO "*would not investigate TRC Cases*". As indicated in the preceding paragraphs, I informed Advocates Ackermann SC and Macadam that I was unable to authorise the investigation of TRC Cases in terms of section 28(1)(a) of the NPA Act and implored them to rather resort to the provisions of section 28(1)(b). They were simply not prepared to accept my advice, at that stage. Indeed, sanity finally prevailed, and they followed my advice and approached the NDPP but only in December 2003.
72. On 11 November 2003, I received a memorandum from Advocate Ackermann SC. In this memorandum, Advocate Ackerman SC stated, amongst other things that:

"On 3 November 2003 you informed me that you would sign the declaration in terms of section 28 (1) (b) and would appoint SSI De Lange to conduct the necessary investigation".



73. Advocate Ackermann SC is completely misrepresenting my advice to him. In the first place, section 28(1)(b) refers to the authority of the NDPP and I was not the NDPP. What I conveyed to him was that he must approach the NDPP under section 28(1)(b) and if the NDPP approves his request, I will then appoint SSI De Lange from the DSO to conduct the necessary investigation.
74. I expressly pointed out to Advocate Ackerman SC that I had been advising them all along to first approach the NDPP, as he was the only one in terms of the Act, to issue a directive first in terms of section 28 (1) (b).
75. On or about 10 November 2003, Advocate Macadam submitted four TRC matters for consideration in terms of sections 28(1)(b) and 28(13) of the NPA Act. This included their instruction that SSI De Lange be designated as the investigator to deal with the matter.
76. I informed Advocate Macadam that the applications that he had forwarded to me were not in compliance with the prescripts of section 28(1)(b). I again explained to Advocates Ackerman SC and Macadam that I was unable to authorize the four applications until they had followed the letter of the law.
77. I never oscillated in my advice to the PCLU at all. I advised them to first approach the NDPP, who would then issue the required directive and instruct me to declare the TRC Cases projects and appoint DSO investigators.



78. It is common cause that the PCLU finally accepted my advice and directed their applications correctly to the NDPP on 8 December 2003. The NDPP approved their request and duly signed the directive instructing me to authorize the four matters in terms of section 28 (1) (b) on 24 February 2004. I attach as annexure **MGL4**, the Directive signed by the NDPP on 24 February 2004.
79. I duly complied with the NDPP's Directive and authorized the following 4 matters and designated DSO investigators:
- 79.1 The PEBCO 3 matter;
 - 79.2 The BRIAN KULUNGA matter;
 - 79.3 The MOTHERWELL 4 matter; and
 - 79.4 The Reverend FRANK CHIKANE matter.
80. The PCLU, was alive to and fully appreciative of how section 28 (1) (b) should be invoked. They accordingly adopted the same procedure and submitted a further application in terms of section 28(1)(b) of the NPA Act.
81. They now addressed their application to the correct person, namely, the NDPP, Advocate Bulelani Ngcuka, who then issued the required directive and instructed me, on 26 February 2004, to authorise two further matters, in terms of section 28(1)(b). This Directive is attached hereto as **MGL5**.
82. I again duly complied with the instructions of Advocate Ngcuka, and I authorised the two matters and DSO investigators were assigned to assist in the matters.



83. It is inexplicable and confounding to me why the PCLU only utilised the section 28(1)(b) process only in respect of six (6) matters, leaving out the rest of possibly ripe matters that could have been similarly authorised by the NDPP.
84. I note that Advocate Macadam contends in paragraph 39 of his affidavit before this Commission that I failed to respond to Advocate Ackerman's memorandum of 10 November 2003. I disagree with Advocate Macadam's contention.
85. I engaged Advocate Ackermann on his memoranda to me of the 10th of November 2003 and Advocate Ackermann SC confirms our engagement and states that I was "unmoved" by his plea.
86. Significantly, it is incorrect that I was unmoved and tone deaf to the TRC Cases. It is I, who advised Advocates Ackermann SC and Macadam to adopt the section 28(1)(b) of the NPA Act to ensure that DSO investigators were appointed to assist with matters.
87. I further note that Macadam states in paragraph 40 of his affidavit that *"On 8 December 2003, NDPP, NGCUKA acting in terms of section 28 (1) (b) instructed Ledwaba to have 4 (four) TRC cases specified and referred to be investigated by DSO, ..."* Macadam is obviously incorrect in this regard because the NDPP only directed and instructed the DSO on 24 February 2004, in line with their request dated 8 December 2003.

88. I am aware that the PCLU applied to the NDPP and NPA senior management that six (6) DSO investigators be seconded to their unit. I am also aware that this request was not acceded to by the NDPP and his team (Dr Ramaite and Advocate McCarthy).
89. I can confirm that the overriding factor in refusing this request was because of the available capacity of investigators within the DSO. The SNPU then only had six (6) investigators. These investigators were saddled with the investigation of highly complex DSO authorized projects in the PCLU. Had the request by the PCLU been acceded to, this would have resulted in the entire SNPU being highly constrained.
90. The Calata affidavit states that the DSO persisted in its refusal to appoint investigators, as did the SAPS. It is alleged that according to Advocate Macadam the refusal by the DSO to provide investigators, effectively brought an end to the investigation and prosecution of TRC Cases.
91. This is an incorrect representation of the context within which the DSO and the PCLU interacted, regarding the investigation and prosecution of TRC Cases.
92. The DSO authorized the investigation of a total of six (6) TRC matters as directed by the NDPP in 2004 and as per the requests of the PCLU.
93. In my view, the PCLU had no impediments from pursuing any new investigation utilising the section 28(1)(b) process by applying to the NDPP.

94. The last application the PCLU made in 2003, was on 8 December 2003. The NDPP approved their request and instructed me to authorize the four matters on 24 February 2004 and further instructed me to authorize two TRC matters on 26 February 2004.
95. I again wish to stress that the DSO never stopped or refused to investigate TRC matters.

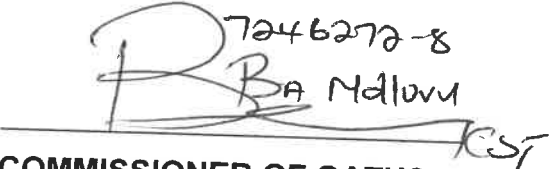
CONCLUSION

96. In conclusion I deny emphatically that I stopped or interfered with the investigation or prosecution of TRC Cases.

14th
DATED AT PRETORIA ON THIS DAY OF APRIL 2026.


MALALA GEOPHREY LEDWABA

Thus sworn to and signed before me at JHB Central on this, the 14th of April 2026, the deponent having acknowledged that he understands the contents of this affidavit, and that the contents thereof are true, that he has no objection to the taking of the oath and that he considers this oath to be binding on his conscience.

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COMMISSIONER OF OATHS



Believe Akani Mdlorvu
01 Commissioner Street JHB
Constable



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ANNEXURE "NYG L"

CICU & SNU

Number	Project Name	List received from Head Quarters	On Head Office List	File at Head Office	Head Office File number	Questionnaire received	On e.g. 1
1	Bikabong	X	X	X	HQ-58	Yes	Yes
2	Dog	X	X	X	HQ-96	Yes	Yes
3	Drogen Chaser	X	X	X	HQ-19	Yes	Yes
4	Macamba	X	X	X	HQ-105	Yes	Yes
5	Cherry	X	X	X	HQ-13	Yes	Yes
6	Yergart	X	X	X	HQ-78	Yes	Yes
7	Equatorial Guinea	X	X	X	HQ-106	Yes	Yes
8	Ryanyia	X	X	X	HQ-182	Yes	Yes
9	Technikon NW	X	X	X	HQ-11	Yes	No
10	Southern Ambition	X	X	X	HQ-8	Yes	No
11	Gumel	Yes/KZN	X	Yes	KZN-5	Yes	No

SNU TRC FILES

1	Blockade	Murder - killing of ANC members by IFP in Ermelo
2	COSAS	Murder of four members of COSAS
3	Credock Four	Kidnapping/Murder of ANC members by SAPS Security Branch
4	Duboni	Murder of MK member by SAP Security branch
5	Early Learning	Investigation: Bombing of early learning center in Cape Town
6	Fire Fly	Murder and kidnapping of Brian Ngqiranga Velepoase Ashani
7	Lucky Star	Investigation into the murder of Apia members
8	Mamelidien	The murder of ten ANC comrades by N-14 Security police
9	Nelson Sifhole	Murder - killing of ANC members by unknown persons
10	Pelsothrose	Kidnapping/Murder of ANC by SAPS Security Branch
11	Powell	Powell received 70 tons of weapons from Eugene De Kock
12	Project	Assassination of activists Project in Nyanga
13	Sevabiko	Investigation into the murder of Steve Biko by APS Security branch
14	Tinol	Alleged murder of detainees in police detention

Closed Files

1	Catcha	Selling of criminal case dockets by prosecutors
2	Finkelstein	Investigation into hijacking syndicate
3	Hurricanes	Murder of traffic officer
4	Mosafiro	Contravention of foreign military Act
5	Observatory	Legal opinion on the appointment of SC
6	Oxwich	Car hijacking syndicate
7	Thorn	Investigation into contravention of Foreign Military Act

ADIO

AD 1473

/investigations

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Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

INTERNAL MEMORANDUM

TO : CIO Leask
FROM : Adv M G Ledwaba
DATE : 15 JULY 2003

SUBJECT : SNPU INVESTIGATIONS

1. Due to the recent creation of the PCLU it has become necessary to re-define the mandate and operations of the SNPU as follows:

(i) TRC cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv TONGWANE must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators and you are accordingly authorized to conduct the necessary handovers.

(ii) Operation Sunflower

Advocate MACADAM will continue to oversee the disruptive action with the Consumer Council with your assistance. Once the SAPS report is received and evaluated, I will make a decision on the final disposal of the case.

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(iii) **Operation Black Widow**

Adv TONGWANE must oversee the finalization of the investigation and conduct the prosecutions which may arise.

(iv) **Operation Final Curtain**

SAPS must continue with the investigations under the direction of the prosecutor arranged by Adv ACKERMANN. You may give limited assistance to SAPS and the prosecutor on specific aspects when necessary.

(v) **Foreign Mercenaries**

Adv PRETORIUS has been delegated to assess all cases currently being investigated by both SAPS and the DSO. (I have communicated separately to the Regional Head Gauteng in this regard). I will make a decision as to the involvement of the DSO in such investigations once I have received a report from Adv ACKERMANN.

Adv M G Ledwaba
HEAD : OPERATIONS

/tp

Handwritten signatures and initials. There are three distinct marks: a stylized signature at the top, a large 'B' with a horizontal line through it in the middle, and a signature that appears to be 'A' or 'H' at the bottom right.

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

TO: Geoph Ledwaba

EMAIL: Ledwaba.malala@yahoo.com

INTRODUCTION AND ESTABLISHMENT OF THE COMMISSION

1. On 29 May 2025, the President of the Republic of South Africa issued Proclamation Notice No. 264 of 2025, establishing 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").
2. The Commission was appointed in terms of section 84(2)(f) of the Constitution, 1996. The Honourable Madam Justice S. Khampepe serves as Chairperson, with the Honourable Mr Justice F. D. Kgomo and Adv A. Gabriel SC as members.
3. In terms of its mandate, the Commission is required to inquire into, make findings, report on, and make recommendations concerning allegations that, since 2003, efforts or attempts were made to influence, pressure, or otherwise improperly prevent the South African Police Service and/or the National Prosecuting Authority from investigating or prosecuting TRC cases. The Terms of Reference further require the Commission to determine whether officials within these institutions colluded in such efforts, and whether further action—including investigations, prosecutions, or the payment of constitutional damages—is warranted.

BA

4. Among the parties identified as having a substantial interest in these proceedings are:
 - a. The applicants in the matter of L.B.M. Calata and 22 Others v Government of the Republic of South Africa and Others (Case No. 2025-005245, North Gauteng High Court, Pretoria); and
 - b. The families of victims in TRC cases who have a substantial interest in the matters under inquiry.

NOTICE IN TERMS OF RULE 3.3

5. This notice is issued in terms of Rule 3.3 of the Rules of the Commission, read with the Regulations made under Government Notice R.278 of 2025.
6. The Commission's Evidence Leaders intend to present the evidence of one or more applicants in the Calata case, and any person who in the opinion of the Evidence Leaders possesses information that relates to the paragraph 9 allegations against you and is relevant to the Commission's work.
7. The specific date and venue for the hearing at which such evidence will be presented will be communicated to you in due course.
8. The evidence in paragraph 9, being the extract of the Calata matter's founding affidavit, with corresponding paragraph numbering, implicates, or may implicate, you in allegations regarding efforts or attempts to halt or suppress the investigation or prosecution of TRC matters. Further details of the Calata proceedings, including the said affidavit, are available on the Commission's website at www.trc-inquiry.org.za

B.A.

PARTICULARS OF IMPLICATION

9. It is alleged as follows:

129. Following Mbeki's speech, those wielding power and influence wasted little time in closing down the TRC Cases. Within a few weeks of the speech, attempts by PCLU prosecutors to commence investigations were blocked when they were refused investigative support by both the DSO and SAPS.

130. As mentioned above, the PCLU was engaged in identifying key TRC cases for further investigation, and they were entertaining requests from family members. One of the requests made to Macadam was from Imtiaz Cajee, nephew of Ahmed Timol who died in security detention in 1971. On 5 May 2003, Macadam sent a letter to Andrew Leask, the Chief Investigating Officer at the DSO (**Leask**) asking him to investigate the Timol case. A copy of this letter is attached to Macadam's aforesaid affidavit (**FA5**) as annex RCM1 (at p807).

131. On 15 May 2003, Macadam submitted a report to the NDPP, the Head of the DSO and the head of DSO operations setting out the TRC cases which had been identified for investigation, which included the Timol case. A copy of this report is attached to Macadam's affidavit (**FA5**) as annex RCM2 (at p809).

131.1 According to Macadam the following cases were being prepared for prosecution:

131.1.1 The murder of four policemen in the Motherwell Bombing. The targets in this investigation were members of the Port Elizabeth

- SB and the Vlakplaas Unit, including Major General Nick van Rensburg.

131.1.2 The prosecution of Major General Nick van Rensburg for ordering the killing of askari Brian Ngqulunga.


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- 131.1.3 The prosecution of the SB members responsible for kidnapping the PEBCO 3 from the Port Elizabeth Airport in 1985.
- 131.1.4 The prosecution of AZAPO leader George Wauchope for murder and other charges.
- 131.1.5 The prosecution of Phillip Powell for possessing hand grenades and other illegal weapons in April 1994.
- 131.1.6 The prosecution of JM Ngcobo and others for the concealment and possession of an arms cache at the Nqutu Bunker in May 1999.
- 131.1.7 The prosecution of the CCB members responsible for the bombing of the Early Learning Centre in Athlone.
- 131.2 The next category of cases was titled "POTENTIAL FURTHER PROSECUTIONS ARISING FROM THE ABOVE" and included:
- 131.2.1 The murder of the PEBCO 3. It was noted that a kidnapping prosecution could encourage one or more suspects to speak about the murders for a "lesser sentence".
- 131.2.2 The murder of the Cradock Four. It was noted that the same suspects behind these murders were also involved in the Motherwell and PEBCO 3 killings, and that prosecutions in those killings could encourage suspects to come forward in the Cradock Four case in order to secure a "lesser sentence".
- 131.3 The next category of cases was titled "NEW CASES BEING EVALUATED FOR PROSECUTION PURPOSES" and included:

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- 131.3.1 The murder of the COSAS 4.
- 131.3.2 The murder of askari Adriano 'Strongman' Bambo, who was allegedly murdered by the SB to prevent him disclosing details about the murder of Nokuthula Simelane and others.
- 131.3.3 The murder of a detainee on the East Rand by Willem Helm Johannes 'Timol' Coetzee.
- 131.3.4 The murder of askari Dan Mabolo.
- 131.3.5 Allegations by an IFP sentenced prisoner to have knowledge of murders in the East Rand from 1988.
- 131.3.6 447 dockets relating to APLA handed over by SAPS Crimes Against the State Unit.
- 131.3.7 Six to eight dockets linking the AWB to pre-election bombings previously dealt with by Adv Fick.



The next category of cases was titled "HIGH INTEREST CASES WHICH REQUIRE ATTENTION IRRESPECTIVE OF THE NATURE OF AVAILABLE EVIDENCE" and included:

131.3.8 The murder of Victoria Mxenge.

131.3.9 The kidnapping, torture and murder of Ntombikayise Khubeka.

131.3.10 The kidnapping, torture and murder of Nokuthula Simelane

131.3.11 The decision by the DPP (Pretoria) not to prosecute SAP General Krappies Engelbrecht.

131.3.12 The un-investigated allegations against SAP General Bassie Smit.

131.3.13 The Ciskei coup d'etat.

131.3.14 The Transkei coup d'etat.

131.3.15 The pre-election train violence in Gauteng.

131.3.16 The murder of Reggie Hadebe.

131.3.17 The murder of Dulcie September.

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131.3.18 The refusal of amnesty to 37 high ranking ANC officials.

131.3.19 The decision by the DPP KwaZulu Natal not to prosecute IFP hit squads.

131.4 Other categories were titled "*CASES IN THE PROCESS OF BEING CLOSED*", "*ASSISTANCE TO OTHER AGENCIES*" and

- "*REPARATIONS RELATED ACTIVITIES*". Another category dealt with cases that had been put on hold pending the appeal in the Basson case in relation to jurisdiction for conspiracy to commit crimes outside South Africa. These cases included:

131.4.1 The murder of Anton Lubowski.

131.4.2 The Lesotho Raid (also known as the Maseru Raid).

131.4.3 The Botswana Raid (also known as the Gaborone Raid).

131.4.4 The Swaziland Raid.

131.5 Macadam concluded his letter with certain "Policy Considerations":

131.5.1 Prosecutions not to be conducted on a piece meal basis except where special circumstances demand (e.g. witness on point of

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death, accused about to leave South Africa or engaged in current criminal activities).

131.5.2 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.

131.5.3 Thereafter prosecutions will be instituted. After convictions have been obtained attention will be given to cases which currently have evidence since convictions may act as incentive for perpetrators to come forward.

132. If only a fraction of the cases listed in Macadam's report had been resolved in the early 2000s it would have brought significant closure for the concerned families and given considerable impetus for the finalisation of the balance of cases.

133. The minutes of the Justice Portfolio Committee meeting on 10 June 2003 in respect of the NPA reflected:

*some cases emerging from the Truth and Reconciliation Commission are ready to proceed. In others the NPA awaits rulings from the Supreme Court of Appeal and from the reconvened TRC Amnesty Committee. **The Chair interjected to ask if any legislative change was needed to deal with TRC cases where immunity from prosecution was to be offered.** Mr Ngcuka replied that he could see no need for a change in legislation."* (emphasis added)

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134. At the DSO, it was Special Director Adv MG 'Geoph' Ledwaba (**Ledwaba**) who made decisions on the opening of new investigations. Accordingly, Ackermann and Macadam met with Ledwaba to ask the DSO to conduct investigations referred to in the aforesaid report. Ledwaba was firm in his refusal to take on the TRC cases. In his affidavit, Macadam noted the following about that meeting:

*"The meeting was unpleasant as Ledwaba **made it clear in no uncertain terms that the DSO would not investigate any TRC matters** and that these should all be referred to SAPS."* (emphasis added)

135. A copy of a letter addressed by Ledwaba to Leask dated 15 July 2003 reflecting this decision is annexed to Macadam's affidavit (**FA5**) as annex RCM3 (at p814). In this letter he instructed Leask as follows:

"TRC cases

I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv Tongwane must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators, and you are accordingly authorized to conduct the necessary handovers."

Handwritten signature and initials, likely of the Special Director Adv MG 'Geoph' Ledwaba, consisting of a stylized 'B' and 'A' with a flourish above them.

136. This refusal of the DSO to investigate the TRC cases was a remarkable decision, given that the DSO had previously been seized with the TRC cases and just weeks earlier the NDPP had declared the TRC cases to be "*priority crimes*".

The President must decide

137. It is reflected in Macadam's affidavit that he and Ackermann then met with Commissioner Johannes De Beer, the Divisional Head of the Detective Service of the SAPS (**De Beer**) and requested the SAPS to take over the investigations.

137.1 On 26 September 2003, De Beer replied to Ackermann informing him that the request had been discussed with the National Commissioner of the SAPS, Jacob "Jackie" Sello Selebi (**Selebi**). In his letter De Beer advised that the SAPS would not provide investigators for the TRC cases.

137.2 He indicated that the investigation of the TRC matters was a DSO responsibility and the NDPP would need to approach the President for a decision as to which agency should conduct the investigations. A copy of this letter is attached to Macadam's affidavit (**FA5**) as annex [RCM4](#) (at p816).

137.3 According to Macadam, NDPP Bulelani Ngcuka never approached the President.

138. De Beer explained as follows in his letter:




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

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

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

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

- You are therefore requested to approach the President on the matter, where after we can take the matter further, if necessary.” (emphasis added)

139. It is notable that the SAPS regarded the TRC cases as a political issue. It is also noteworthy that the only state entities authorised to conduct official criminal investigations in South Africa both refused to touch the TRC cases. It is highly unlikely that their decisions were spontaneous or mere coincidences. It is apparent that by May 2003 both the SAPS and the NPA were reluctant to take on the TRC cases, and in all probability had been told not to do so from a political level.

140. The fact that the NPA was told to contact the President reflected that the question of investigating the TRC cases was now a purely political one, and a sensitive one at that. It appeared that only the head of state could make that decision, regardless of what the law and Constitution said about investigative authority.

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141. It is remarkable that NDPP Ngcuka did not contact the President for a decision on this question. The failure to do so probably suggests that approaching the President was seen as a futile exercise.

- No investigations

142. Thereafter Ackermann and Macadam made a last-ditch attempt to persuade Special Director Ledwaba at the DSO to reconsider his decision not to investigate the TRC cases. Ackermann sent Ledwaba a letter (styled as an "Internal Memorandum") dated 11 November 2003 appealing him to appoint investigating officers. It was pointed out in the letter that *"if the DSO did not provide investigators the PCLU would not be able to deliver on its mandate."*

Both the NDPP and Head of the DSO were copied on the letter, a copy of which is attached to Macadam's affidavit (FA5) as annex [RCM5](#) (at p818). This letter is reproduced below:

"1. In the light of current developments, I am constrained to document the history of the above saga.

- i) In 2001 the NDPP decided that the DSO was responsible for the investigation and prosecution of the above cases. Both Advocates Sonn and McCarthy made a number of public statements creating an impression that the DSO was making a sincere effort to do justice to the cases. In

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addition, Advocate Sonn gave the President a full briefing on the matter.

- ii) In 2002 the SNPU was established in order to investigate the cases.
- iii) In 2003 and in response to the TRC's final report, the President placed the responsibility for the investigation and prosecution of TRC matter on the NDPP.
- iv) In May 2003 I gave the NDPP and his Deputies a full briefing on all TRC, cases identified for prosecution.
- My prosecution strategy was endorsed and Advocate McCarthy indicated that there would be no problem in having the cases declared in terms of Section 28 of the NPA Act. The NDPP briefed the Minister and Justice Portfolio Committee accordingly.
- v) Shortly thereafter and in the same month you were presented with applications in terms of Section 28 relating to the cases.
- vi) In July 2003 you verbally informed me that you were not prepared to sign the declarations and were withdrawing the DSO from the further investigation of the cases. A letter to this effect was given to the CIO Leask by you.
(Copy attached)

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- vii) In response thereto I requested Commissioner De Beer to appoint the police to take over the investigations. After a series of meetings with him, he approached the National Commissioner who indicated that the police would only investigate upon written instruction of the President (Copy of De Beer's letter is attached). His primary reason was that the SAPS had transferred all their members with appropriate experience to the DSO in order to capacitate it to conduct these investigations.
- viii) After receipt of De Beer's letter, I made several unsuccessful attempts to contact you to discuss the matter. Eventually I had to report the matter to Dr Ramaite.
- ix) On 3 November 2003 you informed me that you would sign the declarations in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigations.
- x) On 6 November 2003 Dr Ramaite informed Adv Macadam that he had discussed the matter with Adv McCarthy who indicated that the DSO would investigate.
- xi) On 10 November 2003, Adv Macadam presented you with Section 28(i)(b) declarations.

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You informed him:

- a) That you are not prepared to sign any declarations
- b) De Lange would not be appointed despite the fact that it was explained to you that he was part of the initial investigation and familiar with all the witnesses and the facts of the cases.
- c) That during the course of 10 November 2003 another Investigator will be appointed.
- d) The President should not be approached to involve SAPS.

2. As at the date of this letter I have heard nothing further from you. I am constrained to express my concern at the above state of affairs. Since July 2003 no investigations have been conducted.

There are certain cases which could have been prosecuted which have prescribed. There is both National and International pressure to institute prosecutions (e.g. Simelane's case). An amnesty hearing for the Motherwell Matter has been set down for early March 2004 and the TRC was given an undertaking that certain investigations would be conducted and made available to the committee. The availability of witnesses and high public interest dictate that the other cases be brought to trial as soon as possible. The failure to do so will bring the *bona fides* of the National Prosecuting Authority into serious dispute and do irreplaceable damage.

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Since I do not have any investigative capacity, I am powerless to deliver on my mandate. For the sake of justice and expediency, I appeal to you to assign De Lange and another investigator to investigate these cases and to sign the declarations in terms of Section 28(1)(b). This chapter in our country's history must be closed without further delay."

143. Ackermann's heartfelt plea fell on deaf ears. Ledwaba was not moved to act, even though he was advised that the NPA was under local and international pressure, and cases were prescribing. Ackermann's warning that the failure to proceed with the TRC cases would bring the NPA into disrepute, and do irreparable harm to its image, was precisely what happened.
144. The DSO persisted in its refusal to appoint investigators, as did the SAPS. According to Macadam this effectively brought an end to the TRC cases as it meant that no new investigations of the TRC matters could be opened.
145. The TRC cases were effectively closed down before the end of 2003, before the PCLU could commence real case work. The few cases taken forward subsequently were those in which investigation dockets had already been completed.
146.
147. The refusal by both the SAPS and the DSO to investigate some of the most serious crimes committed in South Africa deeply violated their legal and constitutional obligations.

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YOUR RIGHTS AND OBLIGATIONS

10. You are entitled to attend the hearing at which the evidence relating to the above allegations, and any other that may be led against you, is presented. You may be represented by a legal practitioner of your choice.
11. Rule 3.4 requires that, within fourteen (14) calendar days of this notice, you submit a statement in the form of an affidavit responding to the allegations. Your affidavit must specify which parts of the evidence are disputed or denied, and set out the grounds for such dispute or denial.
12. If you wish to—
- a. give evidence yourself;
 - b. call any witness in your defence; or
 - c. cross-examine the witness whose evidence implicates you,
- you must apply in writing to the Commission for leave to do so within fourteen (14) calendar days of this notice, accompanied by your affidavit.

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13. You may also apply for leave to make written and/or oral submissions regarding the findings or conclusions that the Chairperson should draw from the evidence relating to you.

COMMUNICATION WITH THE COMMISSION

14. All correspondence, applications, and affidavits must be directed to: The Secretary of the Commission Secretary@trc-inquiry.co.za.

DATED at **Sci Bono Discovery Centre** Johannesburg on this 24th day of October 2025.

For and on behalf of the Evidence Leaders to the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of TRC Cases.


B_A

er/cris

Office of the Head
Priority Crimes Litigation Unit
HEADQUARTERS

INTERNAL MEMORANDUM

P. O. Box 1511
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PRETORIA
0127

VGM Building
123 Westlake Str
Weavind Park
0184

Tel: (012) 845 6431
Cell: 082 498 6033
Fax: (012) 845 7224

TO: HEAD OF OPERATIONS: DSO
FROM: NDPP
DATE: 8 DECEMBER 2003
RE: INVESTIGATION OF TRC CASES BY THE DSO

I have decided in terms of section 28(1)(b) of Act 32 of 1998 that the following three cases arising from the TRC be investigated by the DSO.

- (i) Kidnapping, assault and murder of the PEBCO 3;
- (ii) Murder of Brian Ngulunga;
- (iii) Murder of Motherwell 4; and
- (iv) Attempted murder of Reverend Frank Chikane.

Kind regards



B T Ngcuka
B T NGCUKA
NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

24/02/04

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APIS 1482



The National Prosecuting Authority of South Africa
Igungya Jikelele lobeshutshini boMzantsi Afrika
Die Nasionale vervolgingsgesag van Suid-Afrika

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Pretoria

0351

121 845-6000

www.npa.gov.za

TO : ADV M G LEDWABA
HEAD OF OPERATIONS

FROM : NDPP

DATE : 26 FEBRUARY 2004

REF: A/INV/25/02 TRC
A/INV/18/02 TRC

RE : REFERRAL OF TRC CASES TO THE DSO IN TERMS OF
SECTION 28(1)(b) OF ACT 32 OF 1998

I have decided to refer the following matter to the DSO for investigation in terms of section 28(1)(b) of Act 32 of 1998. Crimes of murder, attempted murder and conspiracy or incitement to commit murder committed in an organized fashion by Letlapa Mphahlela with reference to the APLA attacks on the St James Church and Heidelberg Tavern situated in Cape Town.

B T NGCUKA
NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS



BA

**IN 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**

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**IN 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**

**STATEMENT OF BULELANI THANDABANTU NGCUKA IN RESPONSE TO THE
COMMISSION'S LETTER DATED 11 OCTOBER 2025: 'REQUEST FOR
ASSISTANCE WITH INFORMATION IN AID OF THE JUDICIAL COMMISSION
OF INQUIRY TO INQUIRE INTO ALLEGATIONS REGARDING EFFORTS OR
ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES'**

PERSONAL BACKGROUND

- 1 I was born in Middledrift, Eastern Cape, and received my early schooling in the Eastern Cape. After matriculating, I studied law at the University of Fort Hare, where I graduated with a B Proc degree in 1977.
- 2 Whilst at the University of Fort Hare, I was arrested and charged for attending the memorial service of Steve Biko who had died in Police Custody and was convicted and sentenced to 30 days imprisonment which on appeal was reduced to a Cautious and Discharge.
- 3 Upon completing my degree, I worked for a short stint as a prosecutor at the Mdantsane Magistrate's Court. Thereafter, I joined the GM Mxenge law firm in Durban as an articled clerk and was admitted as an attorney of the Supreme Court of South Africa in 1980. At the time, the law firm was specialising in human rights and political trials throughout the country. These included representing numerous families whose loved ones were murdered by the apartheid regime, including the families of Mohapi Mapetla, Steve Biko,



Joseph Mdluli, and the PAC trial of Zeph Mothopeng and others (the Bethal Trial).

- 4 On 30 November 1981, I was detained in terms of section 29 of the Internal Security Act. I was kept in solitary confinement and denied visits from family and legal representatives only the police had access to me. On 4 August 1982, I appeared in the Pietermaritzburg High Court and was asked to give evidence against Mr Patrick Maqubela and two others who were charged with High Treason. I refused to testify against my fellow comrades. As a result of that refusal, I was convicted and sentenced to three years in imprisonment. I served my sentence at various prisons, including Leeuwkop, Victor Verster, and Helderstroom in Caledon. During my incarceration, I continued my studies and completed my LLB degree through the University of South Africa.
- 5 While I was serving my prison sentence, the Law Society applied to have me struck off as result of my conviction and sentence. I successfully opposed the application.
- 6 Following my release, I joined my wife in Geneva, Switzerland. She was at the time working for the Young Women's Christian Association ("YWCA"). In Geneva I took up employment with the International Labour Organisation ("ILO"), working in the Equality of Rights Division, known as Egalité. While based in Geneva I obtained a Master of Arts in International Relations from Webster University in Geneva, consolidating my academic grounding in these fields.



- 7 I returned to South Africa in 1987 and joined the law firm of NJ Yekiso and Associates in Cape Town. I continued with my legal work, which primarily focused on political and broader human rights matters. I joined the National Association of Democratic Lawyers ("**NADEL**") and also became active in the United Democratic Front ("**UDF**").
- 8 In 1988, I was detained for a month under the State of Emergency regulations for being part of the preparatory committee of Nelson Mandela's 70th Birthday celebrations.
- 9 In 1989, I was again detained for 2 months under the State of Emergency for being part of the Mass Democratic Movement's Defiance Campaign.
- 10 Upon my release, I was served with a banning order which restricted my movements and confined me to the Newlands Magisterial District.
- 11 After the democratic elections of 1994, I was appointed as the ANC Chief Whip in the Senate. I also became a member of the Constitutional Assembly and its Constitutional Committee, served on the Justice Select Committee, and was Chair of the Joint Committee on the Appointment of the Human Rights Commission, Chair of the Joint Committee for the appointment of the Public Protector, and a member of the Judicial Services Commission.
- 12 After the adoption of the Constitution of the Republic of South Africa, 1996, I was appointed Deputy Chair of the National Council of Provinces.



- 13 A year later, I was appointed as the National Director of Public Prosecutions (“NDPP”) and assumed office on 1 August 1998. I was the first incumbent of the office of the NDPP.

MY TENURE AS NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS (1998-2004)

- 14 In its 11 October letter, the Commission requests my assistance by furnishing any material in my possession, or to which I had access during my tenure, and requests my account of any discussions, decisions, or considerations relevant to the Commission’s Terms of Reference.
- 15 I accordingly, provide this statement to assist the Commission and to place on record such information as I have within my knowledge.
- 16 At the outset I note that my tenure with the NPA ended more than two decades ago on 31 August 2004. Therefore, to the extent that I do not recall specific events with precision, this is due to the significant time lapse since my departure from office.
- 17 Should the Commission require me to identify or comment on a specific document, I request that same be identified in order for me to do so.
- 18 When I started as the NDPP, the office had no resources. I had to start from scratch. I was allocated empty offices, no furniture, no telephone, no basic infrastructure, and no staff. I relied on the co-operation of other state



structures, such as the South African Police Service ("**SAPS**"), the National Intelligence Agencies ("**NIA**"), the South African Secret Service ("**SASS**"), and the Department of Justice which seconded personnel to the NPA at the initial stages and also carried the costs of the seconded staff. There was no National Prosecuting Authority at the time. The Prosecution policy was fragmented. There were 11 jurisdictions, each with its own Attorney General.

- 19 As the first NDPP, I was responsible for establishing the organisational, administrative, and operational framework for the newly created NPA, including setting prosecutorial policy, determining national prosecution standards, and ensuring consistency, independence, and accountability in the conduct of all prosecutions across South Africa. I had to create the structures and had to present to Parliament the National Prosecutorial Policies within six months of assuming office in terms of the NPA Act of 1998. At the same time, I inherited a prosecutions service, which was characterised by a low staff morale and which lacked credibility and legitimacy in the eyes of the majority of society, which viewed the prosecution services as part and parcel of the state's oppressive state machinery. There were also high levels of criminality, particularly in areas such as the Western Cape. In that year, there were 166 pipe bombs incidents and no arrests or prosecutions. In KwaZulu-Natal ("KZN"), there was extreme political violence, and Gauteng experienced a high level of car hijacking.
- 20 The prosecution service as a whole was at its lowest, salaries and conditions of service were inadequate, backlogs were severe (particularly in the magistrates' courts), and there was no single, coherent national prosecution



policy or reliable statistical information on which to base sound management decisions.

- 21 The NPA Act made provision for the establishment of the Investigating Directorate on Organised Crime and Corruption, which would be established in the office of the NDPP. These directorates would be staffed with multi-disciplinary task teams involving prosecutors, investigators, intelligence operatives, and analysts.
- 22 My immediate priorities were therefore to establish the NPA's basic institutional architecture, to appoint deputy directors and senior staff, to address prosecutors' salaries and conditions of service, and to tackle deep-seated performance problems in the lower courts, where the overwhelming majority of criminal cases are finalised and deal with organised crime within the country specifically in KZN and Western Cape . Under my leadership, the NPA developed and published a National Prosecution Policy, a Prosecutorial Code of Conduct, and Directives that were applicable nationwide, replacing the fragmented system of separate attorneys-general, each with their own prosecution policies and practices.
- 23 Pursuant to the NPA Act, I established the Investigative Directorate for Organised Crime and Corruption ("**IDOC**"), primarily to deal with urban terrorism in the Western Cape, political massacres in KZN, and car jackings Gauteng. This was followed by:



- 23.1 the Asset Forfeiture Unit (“**AFU**”) which was designed to complement the fight against organised crime by confiscating the assets that were the proceeds of crime;
 - 23.2 the Specialised Commercial Crimes Unit (“**SCCU**”) to deal with the backlogs in the investigation and prosecution of commercial crimes particularly in Johannesburg;
 - 23.3 the Sexual Offenses and Community Affairs Unit (“**SOCA**”) to respond to gender-based violence cases. This unit was responsible for setting up ThuThuzela centres throughout the country in order to respond to high levels of gender-based violence.
- 24 A central part of this institutional transformation was a deliberate reorientation of the prosecution service towards a constitutional, human rights, and victim-centred ethos. Prosecutors were expected to see themselves as lawyers for the people, functioning within a constitutional democracy and accountable to the values of the Bill of Rights.

TRC MATTERS

- 25 In October 1998, the TRC submitted its final multi-volume report to President Nelson Mandela. That report documented in detail the structure of apartheid, the role of key state organs and functionaries in implementing apartheid policy, and the gross human rights violations that occurred, including torture, abductions, enforced disappearances, judicial and extra-judicial killings, and the unjustified use of lethal force.



- 26 In its final report and associated materials, the TRC handed over to the NPA a substantial body of information and a list of several hundred matters which it considered capable of prosecution.
- 27 Following this handover, I established the Human Rights Investigative Unit ("HRIU") under the leadership of Mr. Vincent Saldanha, an experienced human rights lawyer and Deputy Director Advocate Brink Ferreira. Its mandate was to review and assess whether there was sufficient evidence for NPA to prosecute anyone, and also to identify which cases required further investigation. The HRIU report identified challenges in several high-profile cases. Notwithstanding the rejection of several amnesty applications by the TRC, the available evidence in many cases was not, in the unit's assessment, sufficient to sustain a successful prosecution in a number of these cases. In some cases, offences had prescribed; in others, witness availability or reliability presented insurmountable obstacles. Many additional matters could not be processed to prosecution stage due to pending Amnesty Committee applications brought by the suspects; further delaying decision making.
- 28 My inclination prior to receiving the HRIU report was to farm out the investigation and prosecution of these cases to various DPP offices. This, however, changed after I received the report of the HRIU. At about the same time, Mr. Silas Ramaite, who was a Special Director in my office, approached me and informed me of dockets in the office DPP Pretoria which related to political violence cases, and recommended that these should be brought to the NDPP's office for attention. I then decided that all TRC cases should be brought to the Special National Projects Unit ("SNPU") within the Scorpions,



headed by Mr Chris MacAdam. In order to ensure a coherent and centralised approach, I issued a directive that all TRC-related cases be transferred to the Office of the NDPP from the various offices of the DPP and the SAPS. This consolidation was intended to avoid duplication, consolidate resources, promote efficiency and consistency in decision-making, and enable a coordinated national strategy for TRC investigations and prosecutions.

- 29 The SNPU operated until approximately 2003. During its lifetime, it reviewed and worked on the TRC dockets referred to it, but it did not institute prosecutions because the amnesty process had not been completed. The SNPU's caseload was subsequently taken forward, in varying stages of completeness when the PCLU was established in 2003 and assumed responsibility for post-TRC prosecutions as part of its broader mandate.
- 30 When the PCLU was formed, I recommended the appointment of Mr. Anton Ackerman, who I considered one of the best prosecutors in the country at the time, as the Special Director and Head of the PCLU. The SNPU staff and its leader, Mr. Chris MacAdam, were transferred to the PCLU.
- 31 The PCLU was mandated to manage investigations and prosecutions relating to priority crimes of national and international concern, including matters involving weapons of mass destruction, mercenary activities, terrorism, and South Africa's obligations under international criminal and human-rights law. In accordance with my authority as the NDPP, I was responsible for managing all TRC-related matters. I directed that all cases arising from the TRC process, in which amnesty had been refused or not applied for, be classified as "priority



crimes" and be dealt with by the PCLU. This ensured a single, specialised, nationally coordinated approach to prosecutions emerging from the TRC.

32 After assessing evidentiary sufficiency, witness availability, legal viability, and the prospects of a constitutionally compliant prosecution, the PCLU identified approximately 21 cases warranting further investigation.

33 By the end of 2002 to the beginning of 2003, in reporting to Parliament on the work of the PCLU and the broader post-TRC prosecutions, I explained that some cases emerging from the TRC process were ready to proceed to prosecution, while in others the NPA awaited rulings from the Supreme Court of Appeal and from the reconvened TRC Amnesty Committee. These pending decisions had a direct bearing on whether particular matters could lawfully and prudently be taken forward.

34 As regards the TRC related cases that were prosecuted during my tenure, I refer to the affidavit of Mr. Silas Ramaite, which was filed with the commission and confirm the correctness thereof.

**ALLEGATIONS OF ATTEMPTS TO INFLUENCE OR PRESSURE THE NPA TO
STOP INVESTIGATIONS OR PROSECUTIONS DURING MY TENURE – 1998 to
2004**

35 At the outset, I wish to state categorically that there was never at any stage during my tenure any attempt by a member of the executive or any other person to influence or pressure the NPA or me as NDPP to stop the



investigation or prosecution of TRC cases. I am also not aware of any collusion by any member of the NPA with any such attempt to stop the NPA from investigating or prosecuting TRC cases.

- 36 I have in the above background set out the context and circumstances in which the office of the NPA was established within an evolving prosecutorial environment, at a time when South Africa was establishing, for the first time, a single independent national prosecuting authority. This required significant institutional reform, the development of new systems, policies, and standards, and the consolidation of prosecutorial functions previously dispersed across apartheid-era structures.
- 37 The prosecutorial terrain during the early 2000s was new, complex, and constantly evolving. It was necessary to build national capacity, ensure consistency across nine provinces, establish specialised units, and restore public confidence in the prosecuting authority. These institutional priorities required careful allocation of limited resources and personnel.
- 38 Within this context, the NPA was simultaneously confronted with high-profile, resource-intensive matters, including complex commercial crime prosecutions, organised crime syndicates, national security cases, and international law matters arising from South Africa's obligations under the Rome Statute.
- 39 The TRC cases presented particular evidential and operational challenges: they were decades old, relied heavily on witnesses whose memories had



faded or who were no longer available, and required intensive investigation in an environment where both investigative and prosecutorial resources were severely constrained. Evidence had also been destroyed in many cases.

- 40 Decisions that were taken at the time were not a function of political preference or external influence. They were driven by the need to ensure that prosecutions proceeded only where there was a reasonable prospect of success, where the evidential foundation could sustain a successful prosecution in accordance with its Prosecution Policy and Policy Directives. The limited progress on certain TRC cases must therefore be understood within the broader context of the NPA's developmental stage, the competing demands on its scarce resources, and the operational complexities inherent in prosecuting apartheid-era crimes decades after they occurred.
- 41 At no stage did I receive, tolerate, or act on any instruction designed to shield any individual, organisation, or political actor from lawful prosecution. The decisions taken under my leadership were consistent with the NPA's constitutional mandate and were informed by its Prosecutorial Policy, evidential sufficiency, institutional capacity, and the need to build a functional and credible National Prosecuting Authority. Suggestions to the contrary overlook the broader historical and institutional context and mischaracterise the realities confronting the NPA during its foundational years.
- 42 For years, as an activist and practising attorney, I acted for families of those murdered by the apartheid police. That work was not peripheral to my professional life and my very being. As NDPP, I was at all times, fully



committed to ensure that there was accountability for the grave human rights violations of the past.

RESPONSE TO THE ALLEGATION THAT I DID NOT APPROACH THE PRESIDENT

- 43 In the Calata affidavit, it is alleged that I did not approach the President pursuant to Commissioner De Beer's letter to Mr. Ackermann which *inter alia* demanded that I should approach the President for his written confirmation as to which entity between SAPS and the NPA, the President required to investigate TRC matters. This demand by Commissioner De Beer was with respect nonsensical. The President had in his address to Parliament already stated that the NPA would be responsible for prosecuting TRC related matters. The President's directive by implication gave the NPA the responsibility for sourcing investigators and other resources necessary for the prosecution of TRC matters. The SAPS as an organ of State was required to co-operate with and assist the NPA by providing or seconding investigative resources where these were required. This mutual collaboration and co-operation between organs of State (that is NPA and SAPS) is constitutionally mandated. There was, therefore, no need for me to approach the President in the circumstances. What was required was for the two organs of State to co-operate on the matter and for the leadership of the two institutions to maturely resolve the matter between themselves. Accordingly, when this issue came to my attention, I directed Advocate Silas Ramaite and Advocate McCarthy to resolve the issue.





BULELANI THANDABANTU NGCUKA

February 2026

the TRC cases known as the Special National Projects Unit (**SNPU**), which was headed by Macadam.

102 The NPA, per Adv CB Ferreira, addressed a letter dated 31 August 2000 (but date stamped 11 September 2000) to the TRC in relation to the cases that had been referred for further investigation. We are not in possession of this letter. However, the TRC's legal adviser and evidence leader, Adv PC Prior responded by way of an undated letter (presumably in September 2000) titled "*Human Rights Files and other Relevant Records*". In this letter Adv Prior acknowledged receipt of the NPA's letter and indicated that the TRC would respond in due course. Attached to Adv Prior's letter was a list of 226 TRC cases in table format. This list appears to have been compiled from the TRC Amnesty database. A copy of the letter and table are annexed hereto marked **FA14**.

103 Notwithstanding the above evidence confirming that various lists were handed over to the NPA by the TRC, on 17 September 2024, Adv Rodney de Kock, the Deputy NDPP, stated before a 'TRC matters update meeting' of the Justice and Constitutional Development Portfolio Committee that the NPA had gone through all available TRC information but stressed that no list of cases of perpetrators were referred to the NPA. A copy of the Parliamentary Monitoring Group summary of this meeting is annexed hereto marked **FA15**.

104 It appeared that the NPA devoted few resources to the SNPU. According to the author, Ole Bubenzer (**Bubenzer**) in his 2009 book, *Post-TRC Prosecutions in South Africa*, this was because the NPA was concerned that some cases would have to be withdrawn if amnesties were granted, since at that time the Amnesty Committee was still concluding its work. A copy of Bubenzer's confirmatory affidavit

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FA14

1. Adv. Ferreira
(012) 321 9988

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Attention : Adv. C.B. Ferreira

Per Telefax: (012) 328-9940-3211848

Advocate Ferreira

HUMAN RIGHTS VIOLATION FILES AND OTHER RELEVANT RECORDS

Your letter dated 31st August 2000 (and stamped 2000-09-11).

We acknowledge receipt hereof and shall respond in due course.

Yours faithfully

P. R.

ADV. P.C. PRIOR

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
12/2/1992 'Stormberg' Verkeerdelei	Murder & severe assault	Mr R.J. Fourie killed & Ms May	Amnesty applicants: Mishek May Hendrik Leeuw Daniel Magoda Order. John Showa (deceased)	
January 1991	Murder	Mr M Rampalile	Convicted: JJ de Ru, ex-SAP police officer AM1780/96 who implicated his superior as having given orders to have the victim killed Another person mentioned is Officer Mafaje who was present at the killing, but did not participate.	SAP Security Branch
1990, Date unknown Brandfort	Murder	Councillor Susan Phelane Patrick Phelane (11 years) Edward Phelane	Jack Menera (amnesty applicant) & underground structure of the SDU	UIDI ANC

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1989-1992 Kroonstad	Allegations: Three Million Gang created/supported by SB. as counterinsurgency strategy to undermine UDF & ANC activism. Justice officials worked to undermine criminal prosecutions against gang members. See p. 366-369 TRC report Vol. 3	Affidavits made to Commission Mr PM Thulo Mr JJ de Ru MS Taka FM Taje HRV statement of SAP officer Petros Mzosane	see affidavits by persons as mentioned in previous column for details	
October 1987, Parys Police Station & Sasolburg Police Station	Assault & Torture	Isaac Maduma KZN/JRW/058/PS	Cst. Hennie Sochiva & others, Parys police station, assault Torture, Sasolburg Police Station, unclear	SAP
April 1986 Fountain Police Station Bloemfontein	Torture	20 UDF activists incl: White Mohapi KZN/TIS/038/BL	Sgt. Mamome Sgt. Motsamai (both amnesty applicants) Col. Coetzee Col. Stevenson (both gave orders to assault victims)	SAP, SB
1986 (during state of emergency) Bethlehem	Assault	Polediso Motsoeneng KZN/MR/268/FS	Maj. Stephenson forced victim's father to beat him	SAP

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4/5/1985 Odendaalsrus police station	Murder	Sipho Mutsi COSAS regional organiser KZN/ZJ/115/BL	W/O Maxwell Sithole D/Cst. Magwesa Moya Cst Mashabe Cst. Makhuwe Sec. Post Mortem 9/5/85 Inquests, Welkom Mag. Court Dec 1985 & 1988	SAP Odendaalsrus
May 1985 place unknown	Murder	Sello Mofokeng KZN MR/240/WL	counsellor operating with the A-team, name not provided	
March/April 1985 Tlali Park, Thabong, Welkom	Assault	Thabo Ramatsa KZN/AT/005/FS	members of A-Team, identified by victim at a parade, but none charged	A-Team (emerged in April/May 1985. leader Councillor Albert Phakathi, deceased & several community councillors) see page 362- 3

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
January 1994, place unknown	Torture	Phillipus C Kloppers, AWB member JB06109/03 WR & AM4627/97	unnamed/unknown	SAP
Between Sept 1993 & Feb 1994, more than 20m explosive devices placed on railway tracks, power stations & black townships	Attempted murder	Victims unknown. number of people injured	Jan Cornelis Labuschagne AM3671/96 Daniel Wilhelm vd Watt AM3673/96 Johannes Jacobus Botes AM3672/96	AWB

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Toaster Gang (ANC members) Date unknown, Tembisa (roadblock manned by hostel residents)	Murder & attempted murder	12 minibus taxi passengers killed. Mtzulisi Mashobane (5 years) & driver survived	3 men arrested (establish if prosecuted)	
12/4/1992 Unthambeka section	Murder & attempted murder	7 men killed & 6 seriously injured incl Duma Fakude JB02319/01ERTEM Anton Chauke Absolom Mayo Oupa Eave Cefane Mofatu Makaza Friedah Monama	21 members of Toaster Gang charged & charges were withdrawn, lack of evidence	

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December 1993, roadblock	Murder & attempted murder	4 black people killed incl. Teboho Makhuzo JB05972/01G1SOW Theophilus More Gabriel Shabangu Simon Nkomboni 6 injured	Phillipus Cornelius Kloppers AM4627/97 Deon Martin AM4621/97 Andre F Visser AM7003/97 Petrus Matthews AM4624/97 Gerhardus J Diedericks AM6662/97 Frederick J Badenhorst AM7004/97 Carel H Meiring AM7002/97 Marthinus L vd Schyff AM5435/97 Implicated Japie Oelofse (matter heard)	AWB
November 1993 near Pofadder	Murder	Frikkie Witbooi	GJ vd Sandt	Right wing
September 1993 Potgietersrus	Assault	Tshamaano Robert Mahebeledzha	2 persons, names withheld	AWB
July 1993 Rustenburg	Murder	Rustenburg policeman	Gerald John van Dyk AM0113/96	AWB

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12/7/1993 Zone 3 Sebokeng	Murder	4 ANC members	Victor Mthandeni Mthembu AM7107/96 AM6130/97 Implicated: Prince Gideon Zulu aka Vanana Zulu, KwaMadala hostel (orders)	IFP
1/7/1993 Carletonville	Kidnapping & murder	William Lesejogo & another person	AML Fourie AM0361/96 Gert Jonker AM0484/96	AWB
22/3/1993 place unknown	Murder	unknown policeman	Mosiwa Isiah Khotle AM3443/96	

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Khumalo Gang 15/1/1993 Thokoza	Murder & attempted murder	11 people killed incl. Sabeth Khumalo	Reverend Mbhekisini Khumalo (husband of deceased) convicted: Thami Zimu Thulani Mlaba (amnesty applicants) (Leader of Gang) Note: arrested twice for murder, attempted murder & illegal possession of firearms. and released on bail	Khumalo Gang alleged to be 'integrated to the hierarchy of the IFP' which was initiating and directing the execution of the political projects (See p 716, TRC report, Vol 3 para 692)
29/9/1991 Thokoza Khumalo Street	Murder	Sam Ntuli JB00389/01ERKWA	Thami Zimu & Thulani Mlaba (convicted & amnesty applicants) implicated: Gertrude Mzizi Albert Mlaba aka Mufulela Induna Msomi	IFP, Thokoza Khumalo Gang

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1992. Johannesburg	Murder	unknown person	V. Vosloo AM1003 96	AWB
Witbank			Janse v Rensburg brothers	
Union conflict: 28/9/1992 Escort Bacon Factory, Heidelberg	Murder & attempted murder	1 person killed & 13 people injured incl. Deborah Jokazi JB0347/01ERKWA	Note: amnesty applications re incident (IFP members)	
May 1992 Witbank	Murder	unidentified black man	brothers Janse van Rensburg (2)	AWB

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26/3 1992 near Nelspruit	Murder	Khona Khabela Tisetso Leballo JB00241/01GTSOW Masilo Manna Mxolisi Ntshaota Lawrence Nyalende	Eugene de Kock (convicted) AM0066/96 Rolf Dieter Gevers AM3752/96 Deon Gouws AM3759/96 JJ de Swardt AM3750/96 Ben Burger van Zyl AM7722/97 JHP Hanekom AM3886/96	SAP
24/1/1992 Sharpsville	Murder	SAP member Peter Ransanyile	Simon Khakha S'dumo Ngubeni AM3128/96	ANC

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Train violence:			Train squad:	Alleged:
13/11/1992 East Rand	Murder & attempted murder	Lazarus Shabangu JB00354/01ERKWA	Khayo Sylvester Mvelase Shushe Joss Kiline (commander) Xola Frank 'Jimmy' Mbane	SADF & SAP links to violence dating back to 1988
3/11/1992 East Rand		6 people killed & 7 injured		Involvement of Vlakplaas, as well as link between it and hostel residents (Joe Mamasela & Xola Frank 'Jimmy' Mbane's statement in Thapelo Mbane's amnesty application file
1/7/1991 Germiston-Katlehong line		11 people killed	Xolani Mnguni AM3551/96 convicted	AM3785/96 & Wilhelm Bellingan's amnesty application file
25/6/1991 Kliptown train violence		7 people killed & 18 injured	Albert Msuseni Dlamini (convicted) AM1557/97 refused	AM5283/97
13/9/1990 Benrose massacre		26 people killed & 100 injured	Wayne Hugh Swanepoel AM3727/96	Note: Evidence to Commission. Goldstone Commission implicates:
July 1990 Johannesburg-Soweto line		1 person killed & approx 30 injured	Implicated: M1 Hadebe Selous Scouts, PTG 5 Reconnaissance Regiment ID, Spoorneet Security	Themba Khoza Musa Myeni Humphrey Ndlovu Mr Zondi
August 1991 Ventersdorp NP meeting	Murder & attempted murder	3 people killed & more than 50 injured	Amnesty applicant Eugene Tene'Blanche	

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August 1991 Bophutatswana	Assault & torture	Itumeleng Isaac Mayovo JB00938/03NW	Officer Shuffle	
27/7/1991 Wessellon	Murder	Belesia Malinga JB03768/01MPPIT	unknown members of Black Cat gang & police Implicated: Napoleon Mkonza, Wessellon Mayor	SAP Black Cat Gang
May 1991, Tshing, near Ventersdorp	Assault	Simon Rabesi Phiri JB01567/03NW Maart Matlakala Phiri Judas Sithole Pauline Sithole Nkete Wlemima Mangwela	Eugene Terre'Blanche Piet 'Skiet' Rudolph	AWB

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14/3/1991 Daveyton	Murder & attempted murder	13 people killed & 29 injured 8 statements made to TRC: Samson Zolani Xakeka JB05056/01ERKWA David Sam JB00271/01ERKWA JB01641/03VT JB05380/03VT JB05031/03VT JB04623/03VT JB05224/03VT KZN/TIS/039/BL JB04929/03VT	unknown Judicial enquiry found police used excessive force. Justice B. Donovan & referred to AG. declined to prosecute	SAP
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16/2/1991 Johannesburg	Murder	Bheki Mlangeni JB00195/016GTSOW	Eugene de Kock convicted AM0066/96 WA Nortje AM3764/96 ID 'Steve' Bosch AM3765/96 WR Bellingan AM5238/97 Kobus Klopper AM3762/96 JF Kok AM3812/96 J 'Kobus' Kok AM3811/96 Wahl du Toit (head, security police's technical division) AM3812/96 JJ de Swardt AM3750/96 Implicated: Brig. Nick Janse van Rensburg	SAP. SB Vlakplaas
February 1991 Belfast	Murder	George Nkomane	HJ Slippers AM1002/96 & 3 other persons	AWB

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Date unknown Penge mine	Murder (Explosives detonated)	Johannes Temba Mabothe askari	Willem W. Mentz AM2775/96 Sgt. Dawid J. Brits AM3745/96 Eugene de Kock AM0066/96 Col. Jan D. Potgieter AM5418/97	SAP.SB
Date & place unknown	Murder	SAP member Peter Ransanyile	Simon Khakha S'dumo Ngubeni AM3128/96	ANC
September 1990 Johannesburg	Murder	Johannes Masango	2 persons incl. Van Deventer AM2045/96	

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19/7/1990 Skurwebergpad, near Vlakplaas	Murder	Brian Ngqulunga (akari & testified at Harms Commission re Mxenge murder)	WR Bellingan AM5283/97 Pieter H Botha AM5458/97 Eugene de Kock AM0066/96 Capt Willem W Mentz AM2775/96 Willem A Nortje AM3764/96 Implicated. Simon Radebe Dave Baker	SAP. SB
26/3/1990 Vereeniging	Murder & attempted murder (Police shooting)	13 people killed & more than 400 injured	unknown police Recommend action by Judge Goldstone that police be prosecuted. no action was taken	SAP

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27 1989 railway lines at Mofolo, Midway & Kliptown	Murder	Mofolo 3. Ncebe who had a unit in Mofolo & 2 others	Lt Col Anton Pretorius AM4389/96 Moleke Peter 'Frank' Lengene AM4033/96 Manuel Olifant AM4032/96 Sarel Petrus Nienaber AM4391/96 Capt. Daniel Johan Steenberg AM4374/96	
December 1988 Brakpan	Murder	Linah Masesi Mazibuko JB04588/01ERKWA	named CP member	
23/9/1988. bus terminus, Vanderbijlpark	Attempted murder (bomb explosion)	19 people incl William Henry Ryan JB06463/03WR	ANC amnesty applicants Sipho Nicodemus Mihembu AM6028/97 Tsehisi Edward Mokau AM6028/97	

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22/9/1988 'Why Not' nightclub, Hillbrow	Attempted murder (Bombing)	some people sustained injuries	Charles Zeelie W/O AJ v Heerden AM4134/96 PL Du Toit AM4131/96 GN Erasmus, then divisional commander of the Witwatersrand 4134/96	
1/9/1988 Khotso House J11B	Attempted murder	23 people injured	Adriaan Vlok (amnesty applicant) Col Eugene de Kock Gen. JV vd Merwe (amnesty applicant) Implicated President PW Botha	Members of Government & SAP. SB
23/8/1988 near Pondrft, Alldays	Murder	3 people killed: Mzikayise Mgqangweni Mkhatshane Johannes Shangaan Mark Mkoto	unnamed farmer Note: I.O Barend vd Merwe	

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10/7/1988 Benoni Wimpy Bar	Murder & attempted murder	Injured Catharina & Tarina Janse v. Rensburg JB06049/01ERKAT Johanna CA Edwards JB06048/01ERKAT Illana Howe Died Maryanne de Oliveira Neto Serrano JB01274/01ERKAT	Ernest Phumizi Sigasa AM5300/97 Elfas Mabore Ndhlovu AM5301/97	ANC
2/7/1988 near gate at Ellis Park Stadium, JHB	Murder & attempted murder (Car bomb)	2 people killed: Linus Mare Clive Clucas JB06084/990VE 37 people injured incl. Christian Hagery EC1442/97ELN	Amnesty applications Harold Mathsidi AM8007/97 Billy Algie Shoke AM8014/97	ANC/MK

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17/3/1988 Krugersdorp Magistrate's court adjacent to local police station	Murder & attempted murder (Car bomb)	3 people killed (2 SADF personnel & 1 civilian) 20 people injured	Amnesty applicants: Hein Grosskopf (convicted) Mohamed Ichbal Shark AM7151/97 Aboobaker Ismail AM7109/97	ANC MK Special Operations
Date unknown, 1988 Springs	Attempted murder	unknown person	Phumelile Masilela AM3146/96	PAC
1987/1988 Mamelodi East	Murder (Placed on a landmine)	'Source 406'	Maj 'Sakkie' Crafford AM5468/97 Dj Kruger AM5233/97	SAP,SB
Date unknown, 1987 5 km's north of Pienaar's River	Murder	Jeffrey Sibiya JB03063/01ERKAT	Capt. Paul Janse v Rensburg v Vuuren AM6528/97 Ioc Mamasela Capt. Jacques Hechter AM2776/96 Sarel du Plessis Crafford AM546/97 Brig. JH Cronje	

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30/11/1987 Hammanskraal Motasi house	Murder	Sgt. Motasi, Police College. Hammanskraal Ms Motasi	Col PJC Loots AM546/97 Brig JH Cronje Capt Jacques Hechter AM2776/96 Paul v Vuuren AM6528/97 Joe Mamasela	SAP, SB
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10/7 1987 Breslau Rd. Alldays	Murder (ambush)	6 MK members incl: WT Alset JB04421/02PS LM Moloi TR Mogashoa	Amnesty applicants: JH Kruger AM4147/96 LM Pretorius AM4366/96 Col. Willem vd Merwe AM4380/96 Sgt. Mathews Schlwana AM3747/96 NS Coetsee AM4121/96 PA Dreyer AM4128/96 Jan Strydom AM4368/96 AJG Erwee AM4135/96 PTCJ Fourie AM4137/96 PPF Fuchs AM4138/96 FCS Swarts AM4512/96 JP vd Berg AM4367/96	SAP & SADF
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23.8.1987 Daveyton	Murder & Torture	Killed: Caiphus Nyoka JB00285/01ERKWA Tortured: Excellent Mthemba Exodus Nyakane Elson Mnyakeni	re murder Marais Stander	SAP
July 1987, Wits Command	Murder & attempted murder	1 person killed & 68 military personnel and civilians injured	Amnesty applications: Heinrich J Grosskopf AM5917/97 Aboobaker Ismail AM7109/97 Joseph Mnisi AM4364/97 Colin Mike de Souza (Establish if docket with Paul Fick)	MK/ANC Special Operations

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7/5/1987 Cosatu House JHB	Attempted murder	2 persons	Amnesty applications: Adriaan Vlok Gen. JV vd Merwe Implicated: Brig. Willem Schoon Head of C Section Gerrit Erasmus Witwatersrand Security branch divisional head Sgt. Bosch head of Vlakplaas technical department	the then NP government & SAP, SB
6/5/1987 Bophutatswana	Murder	Joe Tsele, UDF activist	Brig. Jack Cronje AM2773/96 Capt. Jacques Flechter AM2776/96 Maj. Sarel 'Sakkie' Crafford AM5468/97 Joe Mamasela certain Mbatha	

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Date unknown Motatema police station	Severe assault	Stephen Moganedi JB05134/02NPPTB	De Kock Geld	Lebowa police
6/2/1987 Siyabuswa Murder & Robbery Unit, Mouise, KwaNdebele	Murder (Disappearance in custody)	George Shabangu JB02849/01MPMOU	W/O Eric Magagula Cst. SJ Kritzinger Sgt. A v Schalkwyk Sgt. Sam Mphelo (deceased) Sgt. Dumisani Mahlangu Sgt. Jacob Mthombeni (arresting officers) Note: s29 inquiry conducted & investigative report of TRC has been forwarded to AG for consideration See p 627	KwaNdebele police
January 1987 Alexandra	Murder	11/25 SADF soldiers	Mandla Michael Yende AM5648/97 Thamba Jack Phikwane AM6032/97	PAC
Date unknown 'Lichtenburg Battle'	Attempted murder	unknown member of SAP	Louie Nkululeko Dlova AM6596/97	PAC
1986 Sibaya Police Station Venda	Torture	Luluno J Mulaudzi JB01374/02NPVEN	Nesemari & Mganga	Venda police

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28/5 1986 Ndzuundza royal kraal, KwaNdebele	Murder (police shooting)	2 unknown men	unknown	Imbokodo
	Kidnapping	54 youths incl. Johannes Ramahlala	unknown/unnamed Note: Johannes Ramahlala reported matter to police & camp raided (Need to establish if there were any prosecutions)	

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20/3/1986 Jouberton	Murder (disappearance in custody)	Raniatula Nicholas Thlapi JB01185/03NW JB01452/03NW	W/O Viljoen Sgt. Makutu Cst. Tseladimithwa Tshwaedi Majaja Mano (Arresting officers) Note: statement made to LHR by George Mbathu in 1993 Matter under police investigation	SAP
28/2/1986 Rooigrond Central Prison Bophutatswana	Torture & Assault	Samuel Galeboe Thwane JB000361/03NW	Capt. Molale Capt. Mojanaga 9 other unknown police	Bophutatswana police
January 1986 KwaNdebele	Attempted murder & kidnapping	Mr Abel Nkabindc JB02828/01MPWES	Sam & Joseph Zondo	
1/1/1986 Chief Mayise's house KwaNdebele	Murder	Chief Mayise	Mr Siphon Gumede Mr Maboy Zondo	Concerned citizens/ Leandra vigilantes known as Leandra vigilantes

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Early 1986 Atteridgeville, Oupa Masuku's home	Murder (bombing)	Ms Esther Masuku	Josephus DL Coetser AM3758/96 Hechter 1 black policeman	SAP, SB
June 1985 Duduza	Murder (necklace method)	Maki Skhosana JB00289/01ERKWA	unknown persons (Linked to 26/6/1985 incident. Victim suspected of being an informer & being linked to Joe Mamasela referred to as 'Mike')	

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26/6 1985 Duduza East Rand Operation Zero Zero (See vol. 3, p 269 & vol 2, p 628-631)	Murder & attempted murder	Cosas activists killed with modified grenades with a zero-timed delay mechanism Hosco Lengosane Joseph Mazibuko John Mlangeni Samuel Lekatsa Humphrey Tshabalala Johannes Mazibuko Cedric Dladla 7 people seriously injured	Amnesti licants Gen J vd Merve AM4157/96 (in charge of operation) Brig. Willem Schoon AM4396/96 Brig. Jack Cronje AM2773/96 Sgt. Daniel Nkala AM2460/96 Capt. Roelof Venter AM4382/96 Brig. JLM Delpoit AM4127/96 Francois Steenkamp AM4383/96 Col JF Kok AM3811/96 LC Prince AM4382/96 Andre Roos AM4392/96 Brig. WAL du Toit AM5184/97 (altered timing device) Maj. Gen. Joep Joubert AM3799/96	SAP, Vlakplaas SADF SA Govt Ministry of Law & Order
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Date unknown Sibasa police station, Venda	Severe assault	Samuel Radamba JB01385/02NPVEN	Venda police	
Date unknown Masisi police station, Venda	Torture	Mufhungo A Denga JB01414/02NPVEN	Venda police	
20/5/1983 Church Street, Pretoria	Murder & Attempted murder (car bomb)	21 people killed & 219 injured (11 of the dead were SADF employees, 2 others were MK operatives & remaining were casualties) see p 665, vol 3, para 511 & p 328, vol 2 para 15 for reference no's	3 amnesty applications: Aboobaker Ismail AM7109/97 Johannes Mnisi AM7096/97 Helena Pastoors AM7289/97	MK: Special Operations
8/6/1982 Bethanie	Murder	Bhekani Sam Mchunu Henry Mavella Manyoni Nkosi	unknown business person former police officer	

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15/2/1982 at a certain mining area	Murder & attempted murder	COSAS activists killed: Madikela Ntshingo Matabane Fanyana Nhlapo injured: Zandisile John Musi JB1909/03WR See also s 29 investigative hearing of Joe Mamasela	Christiaan Siebert Rorich AM501/97 detonated the bomb Jan Carel Coetzee AM4120/96 Abraham Grobbelaar AM4143/96 Ephraim Mfalapitsa AM3592/96	
5/2/1982 John Vorster Square, Johannesburg	Murder (death in custody)	Dr Neil Aggett JB00217/01GTSOW CT00410/FLA	William Charles Cecil Smith AM4569/97 re torture Paul Erasmus re illegal search into deceased's home AM3690/96	SAP,SB
5/1/1982 Venda	Assault & Torture	Pastor Ndangeni Petrus Phaswana JB01501/02NPVEN	Capt. Ramaligela Detective Managa	Venda Security Forces

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1981 near Komatipoort	Murder	Isaac Moema aka 'Ace Raniela' an askari	Dirk Coetzee AM10063/96 & other named operatives & superior officers, see amnesty application	SAP, SB
1981 near Komatipoort	Murder	Peter Dlamini KZN/NM/100/NQ an askari Vuyani Mavuso ANC operative	Dirk Coetzee Implicated: Brig. Willem Schoon Gen. Lothar Neethling	SAP, SB
November 1981, Venda	Torture	Pastor Simon Farisani	Ramaligela Managa Nesamari Rambuda	Venda Security Forces
10/5/1981 Bushbuckridge railway station	Murder	Robert Mokoena aka George Sello	Police Note: police statement made re incident	
December 1980, Venda	Assault & Torture	Mbengeni Jonali Ravele JB/01377/02NPVEN	Ramushwana Ramligela	Venda police

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22/11/1977 place unknown	Murder	Robert & Jean-Cora Smit. former government representative at the IMF in Washington & NP parliamentary candidate	Allegations: Jack Widdowson Roy Allen who were named in the 1992 Steyn Report Note: investigations into killings were conducted by members of the East Rand Murder & Robbery squad, alleged that they sought to cover up security force involvement No amnesty applications received	BOSS & SAP Special Task Team
27/10/1971 John Voster Square	Murder (death in custody)	Ahmed Timol JB173/03WR	Col. Greyling Capt. Bean Sgt. Rodrigues W/O Cloete Sgt. FJ Ferreira Sgt. MC Pelsci Sgt. DL Carter all named at inquest	SAP
28/2/1969 or 10/3/1969 Pretoria Central Prison	Murder (death in custody)	James Thabiso Lenkoe JB00092/01GISOW	Interrogated by Maj. JJ Swanevael	SAP

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Between 21/1/1969 & Feb. 1969. Silverton Police station	Murder	Nicodemus Kgoathe (died at HF Verwoerd Hospital) JB0013/03NWRUS Inquest held	Name mentioned Maj 'Rooi Rus' Swanepoel	SAP
Between 25/2/1969 & 28/2/1969 Silverton Police station		Solomon Modipane (died at HF Verwoerd Hospital) No inquest held		
10/9/1969		Jacob Monnakgotla (charged under Terrorism Act & died night before appeared in court) Note: all involved in local disputes about chiefly powers		

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24/1/1964 Greys Building, JHB	Murder (Death in custody)	Suliman Saloojee JB01711/01ERKWA	interrogators: Capt. 'Rooi Rus' Swanepoel Maj. Brits Sgt. CJ van Zyl Cst. Vd Heever Lt. HC Muller Inquest: apportioned: no blame	SAP,SB Railway police

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organization
March 1994 Da Gama factory, East London	Murder	unnamed policeman	unnamed, amnesty applications	APLA
Date unknown, 1993 Fort Beaufort	Attempted murder (under police investigation)	Thamsanga Grootboom EC2361/97ALB Felixizwe Lucky August EC0719/96 Mthetheli Mana LC2356/97ALB Rev Swelandile Kotsela	4 people arrested for possession of weapons. Unclear as to whether people were prosecuted for these cases	
8/11/1993 Umtata. Sigqibo Mpendulo's home (PAC)	Murder	5 unnamed youths, incl. 12 year old	unnamed	SADF

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21/5/1993 Umtata	Murder	Lindile Kula Nkosinathi Tuku Nathaniel Koto	Lungelwa Lupuwana charged AN6371/97 Ntobeko William Matyolo charged AM6078/97 Papama Mgudlwa AM6081/97 Implicated Major General Bantu Holomisa	TDF, Army Intelligence
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1/5/1993 Highgate hotel, East London	Murder (5) Attempted murder	Killed: Deric John Whitfields EC0101/96ELN Boyce Michael Wheeler EC0729/96ELN Injured: Neville Beling EC0167/96 Karl Andrew Weber EC0035/96ELN Doreen Rousseau EC0052/96ELN Nkosinathi Alfred Gontshi EC0196/96ELN	Augustine Mbambo AM2892/96 Dumisani Ncamazana AM2891/96 Note: Highgate hotel given to applicants as a target, see p 89 para 485	APLA
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25/3/1993 Tinis township, Fort Beaufort	Murder	Lata Camagu PASO chairperson at Thublaethu High School	unknown persons No arrests made Note: 3 rd April 1993, ANC members named by PAC as being responsible for killing of PAC supporters, but no arrests made In addition, 10 ANC members arrested & tried for public violence & illegal possession of weapons (Need to establish if in connection with the above mentioned cases)
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22/3/1993 Yellowwoods hotel. Fort Beaufort	Murder	Johan Jerling EC2359/97ALB	Vuyisile Madasi AM6077/97 Lungisa Ntintili AM6539/97 Nkopane Dialelo Moneng AM6427/97 Implicated APLA high command for choosing the target incl. Letlapa Mphahlele	APLA
3/12/1992 Queenstown Spur Restaurant	Murder Attempted murder	I es Barnes EC0780/96PL Z	unnamed	APLA

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28/11/1992 Golf Club, King William's Town	Murder(4) Attempted murder	4 people killed: Ian MacDonald Gillian & David Davis 17 injured incl. Beth Savage EC0051/96ELN Robert Sandford EC0078/96KWT	Tembelani Tandekile Xundu AM3840/97 Malusi Morrison AM5953/97 Thobela Mlambisa AM7596/97 Lungisa Ntintli AM6539 97 Implicated: Letlapa, Director of operations. case pending outcome	APLA
21/10/1992 Seymour, Ciskei	Murder	Sister Janet Mahonga Community leader & ANC Women's League activist (EL hearings)	2 unknown men Inquest: Members of the Ciskei police, charges withdrawn, lack of evidence	Ciskei Police
22/9/1992 Upper Gqumashu, Alice	Murder	Ndondiphela Maseti EC0481/96CCK	Zukile Mkhapela AM6438/96 Ludumo Matsi AM6439/96	ANC

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7/9/1992 Bisho	Murder (Bisho massacre)	30 people killed	Vakele Archbald Mkosana AM4458/96 Mzamide Thomas Gonya AM7882/97 case pending outcome	CDF
August 1992 Tendergate Hewu	Murder	Thembelizwe Dywashe EC0164/96CCK	Mr Lumko Nkolisela Mrola & other ADM members, arrested & released No case	ADM
Mid 1991 Johannesburg to Transkei	Kidnapping	Vulindlela Mbotoli	Rainer Maria Moringe AM0434/96	TDF MI
27/1/1991 between Stutterheim & King William's Town 28/1/1991 Gubevu village	Murder	Col. Onward Guzana, ex- CDF member Lt. Gen. Charles X Sebe	Lt. Col. Anton Niewoudt (amnesty applicant) Clive Brink (amnesty applicant) others, implicated. not applied for amnesty Note. civil case by Niewoudt vs Min of Defence, Pretoria High Court	SADF, Ciskei Intelligence Services/International Researchers

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22/11/1990 Umtata	Murder	Craig Duli	Following people arrested & appeared in court 1997- Maj. Kolekile Mangcotywa Lt Tobias Tgxola Maj. Advocate Sobhuwa Maj. Lungisa Fikeni Check amnesty applications	TDI
February 1988 Umtata	Murder	Lizo Macanda aka MK Gift aka Thembinkosi Gladman Mgibe	Transkei & South African Police admitted involvement in inquest. no one charged	Transkei Police, SAP
12/1/1988 Nqamakwe, Transkei	Kidnapping Attempted murder Murder	Sithembele Zokwe EC0018/96STK	Two Transkei police arrested & escaped	Transkei police
25/8/1987 KwaNobuhle Uitenhage	Murder	Luvuyo Mpambani	known to witness, Thando Gene Mpambani Ngwila (Uitenhage hearings)	AmaMuka Municipal police
17/7/1987 Phakamisa Location East London	Murder	Andile Rweqana (East London Hearings)	unnamed members of the Ciskei security forces known to the deponent	Ciskei police Ciskei Defence Force

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17/7/1987 Phakamisa Location East London	Murder	Andile Rwegana (East London Hearings)	unnamed members of the Ciskei security forces known to the deponent	Ciskei police Ciskei Defence Force
3/7/1987 PE, Veeplaas township	Murder	Mattys Stols	8 people charged No conviction (2 nd PE hearings)	unknown
January 1987 Ladybrand	Murder	4 ANC cell members incl Mbulelo Ngono EC0330/96PLZ EC0329/96STK EC0224/96UTA	Lesizi Michael Jantjie AM7109/97 Anthony Jagga AM7106/97 Colin Anthony Pakenham AM7163/97	SAP
29/7/1986 Veeplaas, Port Elizabeth	Murder Attempted murder	Nontsikelo Dlanjwa Wendy Sizeka Ramathe	young man known to victim (Uitenhage hearings)	
27/7/1986 Grahamstown	Murder	Mick Fikile Mphahlo (EL hearings)	unknown persons No trial, but investigations	unknown
1/7/1986 KwaNobuhle Uitenhage	Torture & severe ill- treatment	Victoria Nondzuzu Makinana-Vena	certain Gerber, currently head of Crimestop, Uitenhage	SAP SB
January 1986 Duncan Village East London	Murder	Nofokile Dikana Zameka Dikana	2 men (charged, 1 died before the trial) No prosecution	

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27/6/1985 Olifantshoek pass, outside PE	Kidnapping & murder	Matthew Goniwe EC0080/96NWC Sparrow Mkhonto EC0029/96NWC Fort Calata EC0028/96NWC Sicelo Mhlawuli EC0079/96NWC	Maj. Gen Nick Janse van Rensburg AM3919/96 Maj GJ Lotz AM3921/96 Lt. Col. Eric Taylor AM3917/96 Col. Harold Snyman AM3918/96 Maj. Hermanus Barend Du Plessis AM4384/96 Eugene de Kock AM0066/96 Capt. JM 'Sakkie' van Zyl AM5637/97	SAP, SB & CCB
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11/5/1985 Ben Schoeman airport & Post Chalmers	Kidnapping & murder	PEBCO 3: Sipho Hashe EC0003/96PLZ Champion Galela EC0005/96PLZ Quqawuli Godolozu EC0004/96PLZ	Maj. Herman Barend du Plessis AM4384/96 Maj. GJ Lotz AM3921/96 Capt. Gideon Niewoudt AM3920/96 W/O Johannes Koole AM3748/96	SAP,SB
exact date unknown, 1985 PE	Kidnapping Murder	Aubrey Jacobs Fulani (policeman)	unnamed but known to victim, Nokuzola Carol Anne Fulani (1 st PE hearings)	unknown

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26/6/1981 Maseru Jeffreys Bay Komatipoort	Kidnapping Torture Murder	Sizwe Kondile EC0021/96S1K	Dirk Johannes Coetzee AM0063/96 Nicolaas Johannes Janse v Rensburg AM3919/96 Gerrit Nicholas Erasmus AM4134/96 Hermanus Barend du Plessis AM4384/96 Johannes Gottfried Raath AM4397/96	SAP SB, Vlakplaas Unit
1980 Sanlam Centre	Torture & Severe Assault & ill Treatment	Zubeida Jaffer, journalist gave substantial coverage to people killed in 1980 violence	Capt. du Plessis (assault) & others	SAP.SB
10/7/1978 Sanlam Building, PE	Murder (death in custody)	Lungile Tabalaza EC0002/96PLZ	Maj. PR de Jongh Lt. Verceuil Sgt. PJ Nel Cst. Mene Inquest held	SAP SB
5/8/1976 Kei Road Police station	Murder (death in custody)	Mapetla Mohapi EC0007/96PLZ	unknown	

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CLASS A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z. AA. AB. AC. AD. AE. AF. AG. AH. AI. AJ. AK. AL. AM. AN. AO. AP. AQ. AR. AS. AT. AU. AV. AW. AX. AY. AZ. BA. BB. BC. BD. BE. BF. BG. BH. BI. BJ. BK. BL. BM. BN. BO. BP. BQ. BR. BS. BT. BU. BV. BW. BX. BY. BZ. CA. CB. CC. CD. CE. CF. CG. CH. CI. CJ. CK. CL. CM. CN. CO. CP. CQ. CR. CS. CT. CU. CV. CW. CX. CY. CZ. DA. DB. DC. DD. DE. DF. DG. DH. DI. DJ. DK. DL. DM. DN. DO. DP. DQ. DR. DS. DT. DU. DV. DW. DX. DY. DZ. EA. EB. EC. ED. EE. EF. EG. EH. EI. EJ. EK. EL. EM. EN. EO. EP. EQ. ER. ES. ET. EU. EV. EW. EX. EY. EZ. FA. FB. FC. FD. FE. FF. FG. FH. FI. FJ. FK. FL. FM. FN. FO. FP. FQ. FR. FS. FT. FU. FV. FW. FX. FY. FZ. GA. GB. GC. GD. GE. GF. GG. GH. GI. GJ. GK. GL. GM. GN. GO. GP. GQ. GR. GS. GT. GU. GV. GW. GX. GY. GZ. HA. HB. HC. HD. HE. HF. HG. HH. HI. HJ. HK. HL. HM. HN. HO. HP. HQ. HR. HS. HT. HU. HV. HW. HX. HY. HZ. IA. IB. IC. ID. IE. IF. IG. IH. II. IJ. IK. IL. IM. IN. IO. IP. IQ. IR. IS. IT. IU. IV. IW. IX. IY. IZ. JA. JB. JC. JD. JE. JF. JG. JH. JI. JJ. JK. JL. JM. JN. JO. JP. JQ. JR. JS. JT. JU. JV. JW. JX. JY. JZ. KA. KB. KC. KD. KE. KF. KG. KH. KI. KJ. KK. KL. KM. KN. KO. KP. KQ. KR. KS. KT. KU. KV. KW. KX. KY. KZ. LA. LB. LC. LD. LE. LF. LG. LH. LI. LJ. LK. LL. LM. LN. LO. LP. LQ. LR. LS. LT. LU. LV. LW. LX. LY. LZ. MA. MB. MC. MD. ME. MF. MG. MH. MI. MJ. MK. ML. MM. MN. MO. MP. MQ. MR. MS. MT. MU. MV. MW. MX. MY. MZ. NA. NB. NC. ND. NE. NF. NG. NH. NI. NJ. NK. NL. NM. NO. NP. NQ. NR. NS. NT. NU. NV. NW. NX. NY. NZ. OA. OB. OC. OD. OE. OF. OG. OH. OI. OJ. OK. OL. OM. ON. OO. OP. OQ. OR. OS. OT. OU. OV. OW. OX. OY. OZ. PA. PB. PC. PD. PE. PF. PG. PH. PI. PJ. PK. PL. PM. PN. PO. PP. PQ. PR. PS. PT. PU. PV. PW. PX. PY. PZ. QA. QB. QC. QD. QE. QF. QG. QH. QI. QJ. QK. QL. QM. QN. QO. QP. QQ. QR. QS. QT. QU. QV. QW. QX. QY. QZ. RA. RB. RC. RD. RE. RF. RG. RH. RI. RJ. RK. RL. RM. RN. RO. RP. RQ. RR. RS. RT. RU. RV. RW. RX. RY. RZ. SA. SB. SC. SD. SE. SF. SG. SH. SI. SJ. SK. SL. SM. SN. SO. SP. SQ. SR. SS. ST. SU. SV. SW. SX. SY. SZ. TA. TB. TC. TD. TE. TF. TG. TH. TI. TJ. TK. TL. TM. TN. TO. TP. TQ. TR. TS. TT. TU. TV. TW. TX. TY. TZ. UA. UB. UC. UD. UE. UF. UG. UH. UI. UJ. UK. UL. UM. UN. UO. UP. UQ. UR. US. UT. UU. UV. UW. UX. UY. UZ. VA. VB. VC. VD. VE. VF. VG. VH. VI. VJ. VK. VL. VM. VN. VO. VP. VQ. VR. VS. VT. VU. VV. VW. VX. VY. VZ. WA. WB. WC. WD. WE. WF. WG. WH. WI. WJ. WK. WL. WM. WN. WO. WP. WQ. WR. WS. WT. WU. WV. WW. WX. WY. WZ. XA. XB. XC. XD. XE. XF. XG. XH. XI. XJ. XK. XL. XM. XN. XO. XP. XQ. XR. XS. XT. XU. XV. XW. XX. XY. XZ. YA. YB. YC. YD. YE. YF. YG. YH. YI. YJ. YK. YL. YM. YN. YO. YP. YQ. YR. YS. YT. YU. YV. YW. YX. YY. YZ. ZA. ZB. ZC. ZD. ZE. ZF. ZG. ZH. ZI. ZJ. ZK. ZL. ZM. ZN. ZO. ZP. ZQ. ZR. ZS. ZT. ZU. ZV. ZW. ZX. ZY. ZZ.

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Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
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11/12/1993 Heidelberg Tavern. Observatory	Murder	Jose Cerqueira Rolande Palmer CT00415 Lindy-Anne Fourie CT02703 Bernadette Langford CT00415	Humphrey L Gqomfa AM0949/96 granted Vuysile B Madasi AM6077/97 granted Theo T Mabusela AM5731/97 Nkosinathi M Siyolo AM6139/97 granted Richard M Dala AM6138/97 Monwabisi Jantjie Sibeko Maxeba Gave orders: Sichumiso Nonxuba Lctlapa Mphahlele Bulelani Sipho Xuma	PAC/APLA
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27/8/1993 Beaufort West, shooting of Translux bus	Attempted murder	8 people injured	Thembinkosi Henge AM6137/97 Sichumiso Nonxuba	PAC/APLA
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25/7/1993 St. James Church, Kennilworth	Murder & attempted murder	11 people killed & 56 injured: Statements received: Killed: Guy Cooper Javens CT00620 Richard Oliver O'Kill CT03029 Myrtle Joan Smith CT03029 Wesley Harker (13) Gerard Dennis Harker Denise Gordon CT01124 Marita Maria Ackerman CT02922 Oleg Karamijn Andrey Katyi Valuev Pavel	Convicted & granted amnesty. Gcinikaya Makoma AM0164/96 Mkhumbuzi AM6140/97 Mlambisa AM7596/97 Implicated & not charged: Mr Lctlapa Mphahele, who applied for amnesty, but did not attend the amnesty hearing. Note: his amnesty application does not clearly state for which offence amnesty is sought Sichumiso Nonxuba	APLA/PAC
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		Valentin Varaska severely injured: Paul Williams CT00618 Martin Bagley		
25/5/1993 Kimberley Bophutatswana Consulate	Murder	Izakiel Mokone CT00141	Walter Smiles Commander: Lawrence Mbatha	NAC/MK
6/12/1992 Khayelitsha railway station	Murder & attempted murder	1 guard shot dead & another wounded	Andile Shicheka AM5939/97 cites others who were involved	PAC/APLA
25/10/1990	Murder & attempted murder	Mpumelelo Manityi Dyantyi CT03708 Melford Dyantyi	3 men incl. Michael Gubayo	Lingelethu West Council
22/2/1990 Gugulethu	Murder	Samuel Mzuga Baloi from Welkom KZN/ZJ/111/WE	Louis (deceased) & others (askaris) see Cst. Bambatha's affidavit, 1995 to Minister of Safety & Security (deceased)	SAP

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1989/1990 date & place unknown	Murder	7 people	people associated with the Lingeletu West town council see statements: Gwiliza CT01339 Gobingca CT08605 9 Lingeletu West town councillors arrested & charged for murder & 6 counts of attempted murder. Charges dropped 2 years later.	
23/7/1989 Athlone Magistrates Court behind public toilets	Murder	Coline Williams Robert Waterwitch. Ashley Kriel unit	Geoffrey Brown Aristedes Spannelis aka Shane Oliver aka Perry aka Ian	NIS. informant DCC. SADF. Western Province Command

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	Assault & Torture	Statements made by BMW members:	Unrest Investigation Unit members:	SAP
		Mohammed Faried Ferhelst CT00666 Bradley Barrow CT013215 Abubaker 'Whitey' Williams CT00185 Colin de Souza CT00520 Fuad Hartzenberg CT01107 Ismael Damon CT00297 Hercules Benjamin Booyesen CT00296 Brian Peter Barends CT00453 Sandra & Jacques Adonis CT01110	Capt. Louis v Brakel Sgt. Ilmar Pikker Capt. Strydom Sgt. JA. Todd	

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		Cleaton Darryl Visagie CT00885		
October 1988 Culemborg	Severe assault	Robert Nana Maliti CT00133	Benzien (Establish if applied for amnesty for this incident)	SAP, SB Culemborg
27/9/1988 Gugulethu	Murder	Mthetheledi Geina ANC operative	Lucky 'Agrippa' Madubula David Musimeke Inquest 27/8/1988	Askaris
5/7/1988 Gugulethu	Murder	Nkululeko 'Solly' Mutsi Anthony Fransch member of Bonteheuwel Military Wing C100302 CT03204	Scociatti Sgt Roslee	SAP

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9/7/1987 Athlone. Kriel's home	Murder	Ashley Kriel CT00307 BMW activist	Benzien AM5314 96 amnesty granted Note: operational planning done. Athlone police station prior Inquest: no one criminally responsible	SAP.SB
15/3/1987 Faure Cape Town	Murder	Dubeni	W/O JH Nel Sgt. WR Bellingan Note: Inquest held	Western Cape Security Branch
14/3/1987 New Crossroads Cape Town	Murder	Pietersen	Members of the Unrest Unit Note: Inquest held	
Date unknown. 1987 Worcester	Assault & Torture	Group of security detainees: Xolile Dyabooi CT00232 Monwabisi Magoqi CT00772 Mary Ngenmtu CT00404	W/O Lucas v Loggerenberg Note. numerous charges vs W/O v Loggerenberg. Sgt H MacDonald & Lt Gerrit Niewoudt by detainees over several years. No prosecution. AG declined to prosecute	SAP

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485

Emergency 1987, Gugulethu police station	Torture & Assault	William 'Keff' Thomas	Officer Nortie	SAP
September 1987	Attempted murder & severe ill-treatment	Bongani Jonas	David Matamele Musimeke (askari) Cst. Patrick Siyali AM7997/97 W/O Barnard	SAP, Riot Unit
14/3/1987 Nyanga Cape Town	Murder	Zola Michael 'Jabulani' Dubeni EC2653/97UTA MK operative	W/O JL Nel Sgt. WR Bellingan (see if amnesty applicant in this incident) Inquest held Note: TRC recommends further investigation p 455 TRC report Vol 3	SAP, SB & Vlakplaas
February 1987 Brackenfell & Bishop Lavis police station	Torture & Assault Attempted murder	Qasim Williams CT01109	Capt v Brakel Capt Strydom Sgt. Todd Colin de Souza (withdrew amnesty application)	SAP BMW

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486

12/6/1986 Transvaal Rd police station, Barkley West, Northern Cape	Assault	David Mabeka CT04407	police, charge laid by victim & victim threatened by perpetrators	SAP
9,10,11 June 1986, KTC	Murder & attempted murder	65 people killed incl. ITN cameraman, George De'Ath, died 10 June 1986 Statements made to TRC 10 statements re killings Also video camera footage TRC offices	Witdoeke State endorsement as well WP JMC Development Board members, Ricky Schelhase & Graham Lawrence Local security forces incl. Brig. Strydom (Michael Bellingan's statement to TRC) Statement stating that the violence orchestrated by the police	Witdoeke State structures incl SAP
25/5/1986 Mitchellsplain	Murder	Moegsien Abrahams CT01123	Colin de Souza AM5377/97	Bonteheuwel military wing

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487

29/1/1985-1988 Kimberley police station	Assault	Thembanani Jacobs James (UDF member)	unknown sergeant	SAP
	Assault		CID offices, unknown	
	Torture		Mr Gavin Toyman	
	Torture		Hendrick Niewoudt & Capt vd Cloff	
Date unknown Mosselbay	Torture (sexual) & assault	Zanele Zingxondo CT00860	incl. Capt vd Merve	SAP
Date unknown Brackenfell police station 1986	Severe assault	Ebrahim Hercules CT01539	Sgt. Pikker Sgt. Todd	SAP Unrest Investigation Unit
Date unknown 1986 Zolani, Ashton	Attempted murder	Ntando Pringle Mrubata CT00130	certain Pani & others	Amasolomizi
Date unknown 1986 Zolani, Ashton	Severe assault	Sipho Sixishi CT00755	certain Matroos	SAP
Date unknown under state of emergency, 1986	Torture	Rodney Mtyobile CT04503	Mr Mochesane	SAP
Date unknown, 1986 Mosselbay	Assault & torture	Patrick Mzathi (14 years) CT06108	unknown policemen incl Sgt. Maritz	SAP
After May & June Witdoeke attacks, KTC	Severe assault	Hercules Benjamin Booyesen CT00296	W/O Barnard & others	SAP, Unrest Unit

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26/3/1986 near Crossroads	Murder & attempted murder (Trojan Horse operation)	killed Lennox Thabang Maphalane CT00706 Eric Heynes CT00824 Goodman Bongani Dasile Several injured	Listed some of individuals involved in inquest	
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489

25/5/1986 Crossroads informal prison	Kidnapping & murder	Kidnapped & killed: Vuyani Dyaboza CT00730 Lukhanyiso Finye CT00730 Kidnapped, young woman unnamed	Ngxobongwana arrested and released on bail on instruction of his senior, the then Divisional Criminal Investigations Officer unknown members of the Witdoeke (See Leonard Knipe's testimony at the KTC hearings)	Witdoeke
17-21/5/1986 Nyanga Bush, Nyanga Extension & Portland Cement	Murder & attempted murder	38 people killed many injured	Members of witdoeke Note: covert & official endorsement of & support of witdoeke. Documentary evidence links WP JMC, WP Command. SADF. Senior personnel at provincial level SSC Note: no arrests made	

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490

31/12/1985 Upington	Murder	Elliot Mbulelo Jonga CT01417/UP	Nicholas Makandile 'Oupa' Links AM5923	Municipal police
3/3/1986 George	Murder	Nkosinathi Hlazo Oudtshoorn activist	Capt. GP Marx & others	SAP
2/11/1985 Worcester	Murder	Cecil Roos Tamsanqua v Staden CT00132	Cst. Michael Phillip Lull inquest finding. Case reopened AM3814/96	SAP
21/9/1985 Worcester	Attempted murder	Andile Feni CT08402 & 2 others	policeman in Zwelithemba	SAP
21/12/1985 Phillipstown	Murder	Sophie Butele CT00513	Silingiso Tshemese	SAP
16/10/1985 Crossroads	Murder	Goodman Mengxane Mali CT00723	Col. Pieter Janse v Rensburg (WP Riot squad Head)	SAP, Riot Unit
'Trojan Horse' Operation		Mabhoti Alfred Vietnam	Cmdt. Salmon Pienaar (SADF)	
	Attempted murder	2 toddlers injured	Lt Douw Vermeulen (Commander of SARP)	SADF
			10 unknown members of SARP	SARP

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491

3/3/1986 corner of Gugulethu NY1 & NY111	Murder Gugulethu 7	Mandla Simon Mxinwa C10070 Zanisile Zenith Mjobo CT00116 Zola Alfred Swelani Godfrey Jabulani Miya CT00818 Christopher Piet C100100 Themba Mlilî Zabonke John Konile C100108 CT03054	Amnesty applicant & matter heard. establish finding Wilhelm Riaan 'Balletjies' Bellingan AM5283/97 Thapelo Mbelo AM3785/96 Xola Frank 'Jimmy' Mbane AM8066/97 Implicated: Joe Coetzer Gladstone Moss Eric 'Shakes' Maluleke Liebenberg Other police officers at the scene W/O Barnard W/O McMaster Maj. Johan Kleyn Dolf Odendaal Stephanus Brits Cpt. Charles Brazelle	SAP. SB Western Cape Vlakplaas, SB
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1977 Date unknown Caledon Square police station	Location	Joseph Ndabezitha CT03031 Toto Mzwandile Nisobi CT03097	Swarts & Greeff Spyker & Wyk	SAP SB
1/8/1977 Tygerberg hospital, Cape Town	Murder/Culpable homicide (attributed to assault & torture)	Elijah Loza, trade unionist & ANC activist died in Tygerberg hospital three weeks later after 65 days in detention	unknown Note: some names appear in HRV investigation file of interrogators	

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493

15/10/1985 Athlone 'Trojan Horse' Operation	Murder	Michael Cheslyn Miranda (11) CT00478 CT00472 Shaun Magmoed (16) CT00472 Jonathan Claasen CT00475	same as 16/10/1985	same as 16/10/1985
29/8/1985 Bellville South house, Bellville	Murder & attempted murder (Trojan Horse operation)	killed: Sarah van Wyk CT03201 4 women injured incl. Monica Daniels, arm amputated CT00151	Cst. E Villet W/O P Kruger Cpt. Ockert v Schalkwyk (orders)	SAP Riot Unit
1985 day of Pollsmoor march, Paarl	Murder	Adri Faas CT03207 CT00434	Lt Col WH Oosthuizen. used private firearm Witness: Capt. Clayton	SAP
22/1/1985 Beaufort West	Murder	Mandlenkosi William 'Tshaka' Khatshi CT00563 CT00570	Cst. De Villiers	SAP
1979 Transvaal Rd police station, Kimberley	Assault	Matthews Teme CT00650	Security police officers incl. Bennet Mochesane	SAP

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496

23/11/1993 Pongola	Murder	Michael Meetywa KZN/11D/313/EM	Emmanuel Mavuso AM7921/92 Mdu Msibi IFP leadership Piet Retief Piet Retief SB members (implicated by Msibi, Pongola CR 120-11-93) see p. 285	IFP SAP SB
8/10/1993 Richmond	Murder	Zmokwakhe Sibongiseni Mfana Phungula (Richmond SDU commander) MLA Mhlongo	Magoda SDU members Killed by an informal 'people's court' CR41-10-93	SDU/ANC
October 1993. Georgetown	Murder	Julius Mkhize (newly appointed chair of Richmond ANC branch) KZN/NNN/043/PM	SDU members (CR12-10-93)	
November 1992. Madadeni township. outside Newcastle	Murder	Prof. Hlalanathi Sibankulu KZN/MR/166/NC KZN/MDU/999/NC	KZP involvement (TRC investigation) Note: Evidence not conclusive. Further investigations?	

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497

Date & Place	Offence(s)	Victim(s)	Perpetrator(s)	Organisation
14/2/1994 Crazy Beat Disco Club. Newcastle	Murder & Attempted murder	Gerbrecht van Wyk killed & several injured	convicted: Bongani Golden Malevu AM0293/96 Andile Shiceka AM5939/97 Walter Falibango Thanda AM5784/97 allegations made are that they were sent by their commanders. Need to establish names & whether applied for amnesty or not	PAC, APLA
29/12/1993 Richmond	Murder	Mnandi Phoswa	Bob Ndlovu & others	

498

19/5/1992 Richards Bay	Murder	April Laliwe KZN/NG/006/EM (shop steward, union affiliated to COSATU & ANC member)	Gcina Mkhize also implicates: Major Langeni (orders) Mayor BB Biyela Romeo Mbuso Mbambo AM4598/97 Zweli Dlamini AM3685/96	IFP
March 1992 K Section, KwaMashu, Durban	Rape Assault	Doris Ngubane KZN/FS/226/DN	4 members of Amasinyora gang incl. deceased, Justice Nkwanyana (KZP member) Note: victim tried to lay charge at the KwaMashu police station, but policeman refused to take statement.	Linked to IFP

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499

8/1/1992 Nqutu KwaZulu, homesteads under Chief Molefe's jurisdiction. North Coast	Murder	3 people, incl. Moiefe's senior induna	group of unknown armed men 2 people arrested, incl. brother of 1 of deceased	unknown
27/10/1992 outside Ixopo	Murder Attempted murder	Reggie Hadebe KZN/SELF/135/DN ANC Natal Midlands Deputy Chairperson Shakes Cele John Jeffries	Bongani Sithole (see Luthuli's amnesty application) Richard Sibusiso 'Sosha' Mbhele AM4018/96 late Chief X Mkhize certain white man with "neat red moustache" 3 unnamed KZP members Local Self Protection Unit Commander	IFP
9/6/1992 Imbali, PMR	Murder	S'khumbuzo Mgwenya (Chair Imbali ANC branch)	Abdul Awethu & 2 others charges dropped, state witnesses did not want to testify (p.219)	IFP

500

21 1/1991 Greytown	Murder	Goodwill Mbuso aka Neville Sikhakhane KZN/MR/011/DN	Amnesty applicants: Eugene de Kock convicted AM0066/96 Larry Hanton AM4076/96 JA Steyn AM453/97 Willie Nortje AM3746/96 ARC Taylor deceased AM4077/96 David "Duiwel" Brits AM3745/96 JJ 'Blackie' Swart AM3750/96 Not applied & implicated Mr Engelbrecht, commander of C Section	SAP SB incl Vlakpaaus
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501

8/2/1992. PMB	Murder	S'khumbuzo Ngwenya (Mbatha) Chair, Imbali ANC branch & PACSA fieldworker	Arrested & charges dropped Phikelele Ndlovu (Imbali mayor) Abdul Awethu (dep. Mayor) No prosecution	
17/11/1991 exact place unknown Natal Midlands	Murder	Rosemary Ngcobo (ANC member)	Nelson Shabangu (amnesty applicant) Riot Unit members Note: Riot unit members were charged and acquitted	SAP, Riot Unit
12/2/1991 Durnacol mines. Dannhauser	Murder (Clashes between Xhosas & Zulus)	Justice Masiba KZN/NNN/026/NC	other miners, unnamed Note: I/O in the matter was Sgt. Komandu No prosecution	

502

14/7/1990 Durban	Murder	Mbuso Shabaiaia KZN/NNN/138/PS Charles Ndaba KZN/NN/076/DN (Involved in Operation Vula)	Amnesty applicants: HJP Botha AM453/97 Sam du Preez AM4130/96 CA vd Westhuizen AM4388/96 L Wasserman AM4508/96 KZN/NNN/138/PS	Durban Security Branch
25/3/1990 - 31/3/1990 lower Vulindlela 7. Edendale valleys, south of PMB	Murder Attempted murder			Inkatha

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503

9/10/1990 Duff's Road near KwaMashu & Innanda. attack on Puleo bus	Murder & Attempted murder	2 unknown persons many others injured (numbers unknown)	Amnesty applicants: Eugene Marais AM0054/96 David Botha AM0057/96 Adriaan Smuts AM0056/96 KZN/SC/01-02	AWB
Date unknown. Umlazi. poisoning of water system by adding cyanide	unclear as to whether people were poisoned or not	unknown	Amnesty applicant Allan Nolte AM2501/96	IFP
7/8/1990 Lamontville. Durban	Murder	Austin Zwane KZN/NN/006/DN	4 KZP members (led by Siphiwe Mvuyane, deceased)	KZP
2/8/1990 Esikhawini	Murder	Dr Henry Vika Luthuli	Cst. Thembinkosi Dube see KZP investigation & inquest findings, 1996	SAP, Vlakplaas

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504

27/3/1990 Payiphini, Mpumaza	Murder (revenge attack)	1 person killed	unknown persons	UDF
9/3/1990 KwaMakhutha, Durban	Murder	Raphael & Winnie Mkhize	Cst. Patrick Mbambo Wellington Mncwango Mohande Whu Cyril Ngema Note: arrested, not clear if any prosecutions	KZP

505

28/3/1990 Llandskop (upper Vulindlela) at Gezibuso, KwaShange & KwaMnyandu	Murder	35 people killed KwaShange 15 people killed (see footnote 15, p 261, Vol. 3, Ch. 3	David Ntombela Chief Shayabantu Zondi Induna Guvuza Khanyile Lolo Lombo & Other unknown armed persons special constables, see amnesty application of Philemon Madlala AM3432/96 Members of the Riot Unit. Fired on ANC without provocation, see William Harrington AM0173/96 Omission, incl. Cst. Nelson Shabangu AM3676/96 No prosecution	IFP Special Constables
27/3/1990 Lower Edendale Valley	unclear if persons killed	residents, Lower Edendale Valley	unknown IFP members Nhlanhla Philemon Madlala AM3432/96	IFP special constables

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506

12/1988 Trust Feed Massacre. New Hanover	Murder & Attempted Murder	11 people killed, 2 people wounded (see p.198 & 199 of TRC report)	Implicated persons not charged & not applied for amnesty: Maj. Deon Terreblanche (deceased) David Ntombela Gabela Brig. Marx (then Head of CID in Natal) 2 unknown IFP members Cst. Willem de Wet Capt. Kritzinger Gen. Vd Westhuizen Col. Langenhoven Gen. Ronnie vd Westhuizen	SAT IFP
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507

6.1 1990 Mbava. Swayimane Wartburg area	Murder Note: 2 inquests held in 1991 & 1995	Vusi Ngcobo Bonowakhe Gasa KZN/HG/922/NY (UDF activists)	acquitted. Muzi Hlophe Peter Smith People below not prosecuted as Tim McNally declined Abraham Shoba, unknown person. Maj Joseph van Zyl (I.O., accessory) implicated in cover up. Robert Mzimela (secretary of Kwazulu Legislature) Z. Mkhize Maj Leonard Langeni	SAP KZP KwaZulu government officials. IFP
Mid-1989. KwaMashu	Murder	certain Jomo. UDF supporter	Bheki Myubu & others arrested, but no court case	AmaSinyora
20/5/1989 Lindelani. Durban	Kidnapping & Assault	Sibusiso Nkabinde KZN/FS/130/DN	Thomas Tshabalala & others	IFP

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508

October 1988 Elandskop PMB	Murder	Phila Portia Ndawandwe aka MK Zandile KZN/nn/018/DN	Amnesty applicants: Lt. Sam du Preez AM4130/96 Sgt. Lawrence Wasserman AM4508/96 Col. Andy Taylor AM4077/96 deceased JA Steyn AM453/97 JA Vorster AM4390/96 HJP Botha AM453/97	Durban SB Members
30/7/1988 Sobantu PMB	Murder	Mxolisi Penwell Khumalo aka MK Mubhi No inquest	Sgt. Simon Makhaye Thulani Kleinbooi Zimu Mzolo	PMB & Greytown Security Branch

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509

November 1988, farm at Verulam	Kidnapping & Murder	Phumezo Nxiweni EC246/96WTK	Amnesty applicants: HJ Botha AM453/97 JA Steyn AM453/97 JA Vorster AM4390/96 Lt. Sam Du Preez AM4130/96 Col. ARC Taylor AM4077/96 deceased C vd Westhuizen AM4388/96 Sgt. LG Wasserman AM4508/96	SAP SB
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510

15/10/1987 Clermont	Attempted Murder	Pearl Tshabalala (Vuka Tshabalala's Wife)	Jamile (orders) Daluxolo Luthuli (amnesty applicant) Msizi Illophe AM1779/96 (granted amnesty) 4 Caprivi trainees incl. Alex Sosha Khumalo David Zweli Dlamini Note: Perps involved in 10/2/1988 incident? Need to establish	IFP
10/2/1988	Murder KZN/MM/992/DN			
9/10/1987 KwaMncane. Zondi Store	Murder	Maqhikila Angelica Mkhize Petronella Mkhize	David Ntombela & 5 others Inquest, but no criminal case	IFP

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511

18/1/1988 'Summertime' unit 1, South Mpumalanga	Murder Attempted Murder	9 people killed incl. Mfanafuthi Gasa Kinathi Mabhidu Musa Khoza Thomas Mncwabe Thomas's brother certain Rolla approx 200 people injured	Daluxolo Luthuli (orders) AM4075/96 Not applied for amnesty Phumlani Xolani Mshengu S'bu Bhengu Other Caprivi trainees Note: attack registered at Ilamarsdale police station, CR184/01/88 No prosecution (p 226)	IFP
30/12/1987 Imbali.PMB	Murder Attempted Murder	10 people killed incl. Busisiwe Paulina Mbeje Many injured incl Bongiwe Mbeje, Simangaliso Mkhathshwa & Sibongile Mabuza	Amnesty applicants: Alex Sosha Khumalo AM4027/96 Daluxolo Luthuli AM4075/96 Zweli Dlamini AM3685/96	IFP

512

9/5/1987 Clermont, Durban	Murder	Zazi Khuzwayo KZN/MM/997/DN	Jamile (orders) convicted of 2 counts of murder & 1 attempted murder Daluxolo Luthuli (amnesty applicant) Sbu Bhengu Hlakaniphile Jamile Msizi Hlophe (granted amnesty, 1996) Caprivi trainees: Phumlani Xolani Mshengu Alex Sosha Khumalo AM4027/96 Vela Mchunu	49
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513

July 1987 Elandskop, Natal	Murder	Dion Charles Ceje aka Mzimela	Amnesty applicants: Sgt. LG Wasserman AM4508/96 Col. Andy Taylor AM4077/96 HJP Botha AM453/97 JA Vorster AM4390/96 JJIS Labuschagne AM5005/97 AE Verwey AM5018/97	SAP SB
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514

18 2 1987	Kidnapping & murder	Stanley Shula KZN/NJ/004/DN	Amnesty applicants: Col. Andy Taylor (gave orders) AM4077/96 deceased Frank McCarter AM4063/96 Adrian Rosslee AM4378/96 Sgt. LG Wasserman AM4508/96 Izak Daniel Bosch AM3765/96	Durban Security Branch & Vlakplans unit, SAP
Exact date unknown, 1987	Attempted murder	Hansford Shangase KZN/PMB/210/PM	Toti Zulu Wasela Awethu aka Sean Hoosen Awethu No prosecution	IFP KZP

515

April 1987 Clermont, Durban	Attempted Murder	Injured: Cornelius Sikhakane Johannes Sibongumusa Luthuli Note: perps instructed to kill them incl. Khayelihle Ndlovu Nkosinathi Sithole Themba Msimango (3 not injured)	Jamile (orders) convicted on 2 counts of murder & 1 attempted murder Msizi Hlophe AM1779/96. granted amnesty, 1996 Not convicted: 2 unknown persons Note: TRC report mentions that 2 caprivi trainees implicated in 1991 trial who absconded. Zweli Dlamini Vela Mchunu	TP
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516

7/9/1986 Quarry Road. Durban	Murder	Blessing Mabaso Thabane Memela Percival Luvuyo Mghobozi Mbongeni Zondi	3 amnesty applications for defeating the ends of justice (role not furnished by applicants) JA Steyn AM453/97 LG Wasserman AM4508/96 MC Botha AM7560/97 KZN/NN/002/DN Note: inquest found police justified	SAP SB
May/June 1986 Chesterville	Murder	Chesterville 4: Russel Mngomezulu Muntuwenkosi Dlamini Russel Mthembu Sandile Khawula Note: inquest held	Amnesty applicants: Willie Nortje AM3764/96 Izak Daniel Bosch AM3765/96 Eugene de Kock AM0066/96	

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517

5/12/1986 Mphomphimeni near Howick, Midlands	Kidnapping Assault Murder Attempted murder	4 prominent MAWU members: Phineas Sibiya KZN/SW/001/PN (deceased) Micca Sibiya (deceased) Simon Ngubane KZN/NN/117/PM (deceased) Flomena Mnikathi KZN/NN/117/PM (survived)	Formal inquest (Howick Inquest 13/88) finding: 9 known persons responsible incl. Vela Mchunu, a Caprivi trainee (absconded from testifying at the inquest) No prosecution (p 239)	L. P KZP
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518

20/11/1981 Umlazi stadium Durban	Murder	Griffiths Mxenge	convicted & amnesty applicants: Dirk Coetzee Almond Nofomela David Tshikilange Joe Mamasela (state witness for TVL AG, not applied for amnesty) Brig. Vd Hoven (instructor) Willem Schoon (informed of planned operation) AM5006/97	Security Branch, Section C
April 1980 Jozini Northern Natal	Murder	Oupa Ronald Madondo aka MK Scorpion	Gert Schoon AM5006/97 Schalk Visser AM5000/97 Donald Gold AM3686/96 Des Carr AM5008/97 Johan Martin van Zyl aka Sakkie AM5637/97	SAP, SB PMB

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519

Date & place unknown 1986	Attempted murder	Vusumze Khanbulu KZN/NNN/290/PM	Dika Awetha No prosecution	IFP
September 1985 & 1988, Lindelani	Kidnapping & Assault	Victor Madele	Thomas Tshabalala Report made to police KZP & SAP, see p 216	IFP
8/8/1985 Umlazi Cinema, Umlazi, Durban (memorial service of Victoria Mxenge)	Murder Attempted murder	17 people killed 20 people killed	Winnington Sabelo (deceased) Thomas Tshabalala KZN/NNN/229/DN unknown IFP members SAP & SADF members, omission	IFP SADF SAP
13/5/1984 Mobil Oil Refinery	Murder	4 insurgents 3 bystanders	unknown Note. Aboobaker Ismail's amnesty application	ANC?
Date unknown	Murder	Philemon Khanyile	angry crowd members of the Riot Unit, incl. Frank Bennetts AM4059/96	A-Team (vigilante group)

520

3/6/1977 Brighton Beach police station, Durban	Murder	Hoosen Hanjaree Inquest (suicide)	Capt. James Taylor Capt. Du Toit see statement of Mohun Deva Gopal, made statement to TRC	SAP SB
1976 Island Rock Sudwana Bay	Torture	Joseph Nduli Cleopas Ndlovu	Col. ARC Taylor, deceased AM4077/96 & others	SAP SB Riot Unit

521

Date unknown. Elandskop	Kidnapping & murder	Bhekayena Raymond Mkhwanazi KZN/FS/121/DN	Amnesty applicants: Lt Col. JA Vorster AM4390/96 Col. ARC Taylor Deceased AM4077/96 S. Du Preez AM4230/96 LG Wasserman AM4508/96	SAP,SB
8/1/1978 Bellair, Durban	Murder	Richard Turner KZN/KP/001/DN	Martin Dolincheck (denies it & implicates Phil Freeman, deceased) See S29 transcripts: Brig Christiaan Earle Maj. Christoffel Groenewald Eugene de Kock & other documents possessed by TRC	BOSS (Bureau of State Security)

**IN 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**

**STATEMENT OF RAYMOND CHRISTOPHER MACADAM 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 a 69-year-old pensioner.
- 2 I obtained a BA.LLB in 1979 and joined the Department of Justice (“**DOJ**”) as a prosecutor in 1980. I was admitted as an advocate in 1981. I was promoted to the rank of Deputy Attorney General for the then Province of Natal in 1992.
- 3 I served as a Director in the South African Truth and Reconciliation Commission (“**TRC**”) from May 1996 until August 1998, providing witness protection and conducting specific investigations.
- 4 In September 1998, I was appointed Deputy Director of Public Prosecutions in the National Prosecuting Authority (“**NPA**”), serving in the Investigating Directorate, Organised Crime and Public Safety (“**IDOC**”). Thereafter, in January 2001, I was appointed to the Directorate of Special Operations (“**DSO**”) but required to oversee the Witness Protection Programme. In early 2002, I returned to my position in the DSO.

- 5 In June 2003, I was transferred to the Priority Crimes Litigation Unit (“**PCLU**”) and remained in the PCLU until my retirement as an Acting Special Director and Head of PCLU in October 2021.
- 6 The purpose of this statement is to respond to Rule 3.3 I received from the Justice Khampepe Commission and to address matters relating to an affidavit deposed to by Mr. Imtiaz Cajee.
- 7 I will below do the best I can to describe the issues as accurately as possible, but I am at times constrained by less than perfect memory due to the passage of time, compounded by the fact that, despite the NPA's best efforts, not all the documents I required could be found. In addition, certain documents are either incomplete or available only in draft form.

NDPP MR BULELANI NGCUKA'S TERM OF OFFICE (1998-2004)

- 8 When Mr. Bulelani Ngcuka became the National Director of Public Prosecutions (**NDPP**) in 1998, he established a unit within his head office, the Human Rights Investigative Unit (“**HRIU**”), specifically to review and assess TRC matters so as to establish which TRC matters were ready for prosecution or required investigation.
- 9 At the time, I was the head of the Investigating Directorate, Organised Crime and Public Safety, in KwaZulu-Natal, which focused on political violence in that province. Mr Ngcuka appointed me to this role on 1 September 1998. Prior

to this, from 1 May 1996 to 31 August 1998, I was a national portfolio director at the TRC.

- 10 After a year or two, the HRIU was dissolved for two reasons: first, the TRC amnesty process had not concluded; and second, it had no investigators and could not conduct investigations. I was still the head of the Investigating Directorate, Organised Crime and Public Safety in Kwa-Zulu-Natal when the Human Rights Investigative Unit was dissolved.
- 11 In January 2001, the DSO was established to investigate organised crime. When the DSO was established, various Directorates, including the Investigating Directorate, Organised Crime and Public Safety in Kwa-Zulu-Natal, of which I was the head, were dissolved to be incorporated into DSO.
- 12 Following the dissolution of my IDOC, Mr. Ngcuka requested that I join the DSO Unit's head office. I understand that he brought me in because of my experience as a national portfolio director at the TRC. When I joined the DSO unit, Mr. Tongwane was its only member.
- 13 At the DSO, my role included investigating TRC cases and prosecutions, as required. Mr. Tongwane and I were the only two members of staff. The DSO unit experienced operational difficulties due to a lack of investigators and administrative support.
- 14 Within a day or two of my joining the DSO, Mr Ngcuka instructed me to leave that portfolio and take over the witness protection programme from the

Department of Justice. The reason for my move was the murder in their safe house of two key witnesses who were due to testify in prosecutions instituted against the People Against Gangsterism and Drugs ("**PAGAD**"), in very serious cases in the Western Cape.

- 15 I then acted as the head of the witness protection programme from January 2001 until early 2002. Thereafter, I returned to the DSO, where a new component, the Special National Projects Unit ("**SNPU**"), had been established. Its mandate was to conduct investigations into matters deemed too complex for the four regional DSO offices. This included addressing TRC cases and to organise projects related to ongoing criminal activities.
- 16 The SNPU was also afflicted by a lack of resources. Its only staff members were Mr. Tongwane and I.
- 17 In May 2002, the head of the DSO, Mr. Sonn, appointed a chief investigating officer and four investigators to the unit. However, they could only assume their duties in November 2002, as they had to be drawn from the DSO's regional offices and therefore required time to finalise their outstanding investigations at the DSO.
- 18 In December 2002, the head of the DSO authorised me to employ two former TRC researchers and Mr Prior, who had served as an evidence leader at the TRC. Shortly after that, however, Mr. Prior returned to private practice.

- 19 With the assistance of the two researchers and the investigators, I compiled a report dealing with 41 TRC matters, which included cases that required investigation. These investigations were identified through various means, including requests for investigations from members of the public. The list of the 41 cases was then presented to Mr Leonard McCarthy, who had replaced Mr Sonn as the Head of the DSO, in February 2003. The report to Mr McCarthy is attached as annexure “**AD1**”.
- 20 In all of these matters, I had identified the need for extensive investigations before any decisions could be taken about whether to initiate prosecutions.
- 21 On 2 May 2003, I was directly approached by Mr Imtiaz Cajee, the nephew of the late Mr Ahmed Timol, who had died in detention in 1971. Mr. Cajee introduced himself as a member of the intelligence agency and stated that he had been referred to me by Cabinet Minister Mr. Pahad. He provided me with the background of a private investigation he had conducted and the documentation he had obtained during the investigation. He drew my attention to the fact that he had information that the daughter of Sergeant Rodrigues (one of the policemen involved in the case of his uncle, Mr Timol) had made disclosures to a journalist, Ivor Powell. He emphasised the need to approach Mr Powell in this regard. Under the DSO’s legal framework, I could not commence an investigation myself, as it required approval by the investigating director. My responsibility was to place information before the investigating Director by way of a formal application in terms of Section 28 of the National Prosecution Authority Act, 1998 (“**NPA Act**”). In this regard, reliable information had to be obtained to justify the investigation.

- 22 On 5 May 2003, I instructed Mr Andrew Leask, the Chief Investigating Officer at the SNPU, to not only follow up on the issue relating to Mr Powell but also to gather other relevant information so as to enable me, once the information had been obtained, to apply for the authorisation of an investigation in terms of section 28 of the NPA Act. I instructed Mr. Leask in writing, and the memorandum addressed to him is attached as annexure “**AD2**”.
- 23 In May 2003, Mr. Anton Ackermann SC invited me to serve as his deputy in the newly established PCLU, which was established in March 2003 by Presidential Proclamation, a copy of which is attached as annexure “**AD3**”.
- 24 Mr. Ackermann was appointed as a Special Director and Head of the PCLU. Unlike the DSO, the PCLU had no investigative capacity and would have to rely on either the DSO or the police for any matters requiring investigation. The mandate of the PCLU was to deal with serious crimes specified in the Presidential Proclamation and any other priority crimes referred to it by the NDPP.
- 25 On 15 May 2003, while still at the DSO, I addressed an internal memorandum to the NDPP, the Head DSO, the Head DSO Operations, and Mr Ackermann SC, which provided details of an audit of TRC cases I had dealt with while at the DSO. The audit sets out cases ready to proceed to prosecution, provided investigations were finalised, as well as cases identified for investigation, including the Timol case. A copy of the memorandum is attached as annexure “**AD4**”.

- 26 On 22 May 2003, as a result of identifying certain TRC cases as having prosecution potential, I submitted applications in terms of section 28 of the NPA Act for investigations into five TRC matters. I also submitted my national project proposal, as required by the DSO, which stated that investigations could be approved only in terms of section 28 of the NPA Act on the basis of an approved project proposal and a budget. A copy of my internal memorandum is attached as annexure **“AD5”**.
- 27 These applications and project proposals were referred to Mr. Malala Godfrey Ledwaba, the investigating director of the DSO. In terms of section 28 of the NPA Act, only he was authorised to approve investigations and to designate investigators to conduct such investigations.
- 28 On 23 May 2003, Mr Ackermann addressed an internal memorandum to the NDPP, requesting a meeting to discuss TRC matters, specifically the progress made by my office. A copy of the memorandum is attached as annexure **“AD6”**.
- 29 On 26 May 2003, Mr Ackermann submitted an internal memorandum to the NDPP, Mr McCarthy, and Dr Ramaite, the Deputy National Director of Public Prosecutions, under whose portfolio the PCLU fell. It set out operational challenges experienced by both Mr. Fick and I. The proposal was to transfer Mr. Fick’s cases to the PCLU and to transfer Dr. Pretorius and I from the DSO to the PCLU. It also proposed an office structure that included the secondment from the DSO Headquarters of six investigators to conduct the identified investigations. A copy of this memorandum is attached as annexure **“AD7”**.

30 Shortly thereafter, a meeting was held between Mr Ngcuka, Mr Ackermann, and I (and possibly Mr McCarthy and Dr Ramaite).

30.1 Mr Ngcuka accepted the proposal insofar as it related to Mr Fick's cases and the transfer of Dr Pretorius and I, from the DSO to the PCLU.

30.2 Mr Ngcuka directed that the PCLU should apply for leave to appeal to the Constitutional Court for the acquittal in the *State v Wouter Basson* case to be set aside.

30.3 Mr Ngcuka directed that I continue working on the TRC cases I had handled at the DSO. The request to second six DSO investigators to the PCLU was not approved, but Mr. Ngcuka made it clear that the investigations should be conducted by DSO members.

30.4 At the meeting, Mr. Ngcuka did not refer the TRC cases to the PCLU as required by its Presidential Proclamation. This, however, was done on 21 October 2003. I attach a copy of the referral signed by Mr. Ngcuka as annexure "**AD8**".

31 In June 2003:

31.1 while I was at the PCLU, I assisted Mr Anton Ackermann with identifying material from the case record in *Wouter Basson* so as to enable the private counsel briefed by the NPA, Mr Wim Trengove SC and Mr Alfred Cockrell SC (who at the time was not yet senior counsel), to determine whether the evidence supported the grounds upon which the application for leave to appeal to the Constitutional Court, would

be based. It was a protracted process that included drafting and presenting an application to the court *a quo* for additional grounds of appeal, which had been identified by the private counsel team. Because Mr Ngcuka had indicated that TRC investigations should be conducted by DSO, I was still required to have the National project proposal approved and to submit applications under Section 28 in respect of all matters I required to be investigated.

- 31.2 I was approached by the legal advisors of the South African National Defence Force (“**SANDF**”), who informed me of an agreement between them and the Office of the State Attorney that refusals of amnesty to current and former members of the military would only be taken on review to the High Court if they were due to be prosecuted. They requested that I give them timeous notice of any intended prosecution so that they could take the necessary steps to have any refusal of amnesty reviewed in the High Court. I acceded to their request. Instituting criminal proceedings before finalisation of the review proceedings would have unduly delayed the criminal trials, as doing so would inevitably have resulted in the postponement of the criminal prosecutions. I duly informed Mr. Ackermann of the discussion with the SANDF and the undertaking I had given. Mr. Ackermann decided to adopt the same process in cases where the former police’s Security Branch were identified as having prosecution potential and involving former Police Security Branch Members. The suspects in these cases were represented by an attorney, Mr. Wagenaar, who also represented

former Minister of Police, Mr Adriaan Vlok, and former Commissioner of Police, Mr Johan van der Merwe.

31.3 Mr. Ackermann did, in fact, meet Mr. Wagenaar and advised him accordingly. Upon his return from meeting Mr. Wagenaar, Mr. Ackermann informed me that Mr. Wagenaar had stated that any prosecution of his clients would lead to the prosecution of the leadership of the ANC, who had been refused amnesty.

31.4 Mr. Ackermann commenced reviewing the 400 ANC dockets, which were prior to April 1994 investigated by the police.

31.5 On 24 June 2003, I wrote to Commissioner Rayman Lalla, the Divisional Head of the SAPS's Crime Intelligence Unit, requesting assistance with the two matters set out in my letter. A copy of my letter is attached as annexure "**AD9**".

32 I could not make any progress on my cases because Mr. Ledwaba's approval of my project proposal, as well as the four applications for authorisation of investigation, were still outstanding. This led to Mr. Ackermann and I meeting with Mr. Ledwaba on 15 July 2003 to discuss the matter. At the meeting, Mr. Ledwaba informed Ackermann and I that he had decided that SAPS must assume responsibility for all TRC investigations previously under the DSO's purview. At this stage, the Timol matter had been identified as a case requiring investigation. A copy of Mr. Ledwaba's written instruction to Mr Leask dated 15 July 2003 as annexure "**AD10**".

- 33 As at 15 July 2003, Mr Leask had not complied with my instructions to him, given on 5 May 2003, relating to the Timol matter. This was because he was still engaged with other matters at the time, including the TRC cases in respect of which I had applied for authorisations to Mr. Ledwaba, as well as organised crime matters that had been allocated to him.
- 34 As a result of Mr. Ledwaba's decision, either in late July or early August 2003, Mr. Ackermann and I approached Commissioner De Beer, the Divisional Head of the Police Detective Service, to ask the South African Police Service ("**SAPS**") to take over the TRC investigations from the DSO, including the Timol matter.
- 35 Commissioner De Beer required that our request be put in writing, and we did this on 20 August 2003.
- 36 On 26 September 2003, Commissioner De Beer wrote to Mr Ackermann giving various reasons why the SAPS would not take over the investigations unless certain conditions were met: that either Mr Ackermann or Mr Ngcuka approach the President (at the time President Mbeki) and obtain an instruction from the President for the SAPS to take over the investigations. I attach a letter dated 26 September 2003 from Commissioner De Beer to Mr Ackermann as annexure "**AD11**".
- 37 To my knowledge, this approach did not occur.

- 38 In the meantime, due to the refusal of the SAPS to take over the cases from the DSO, no further investigations could be conducted into those matters (which were limited to the TRC cases) because the PCLU lacked its own investigative capacity. The PCLU relied on the DSO or the SAPS. The PCLU's hands were tied particularly given the refusal by the SAPS to assist.
- 39 On 11 November 2003, Mr Ackermann wrote to Mr Ledwaba (copying Mr Ngcuka, Dr Ramaite, the DNPP to whom the PCLU reported, and Mr McCarthy, the head of the DSO). In the letter, Mr. Ackermann set out the steps he and I had taken to persuade Mr. Ledwaba to again take over the investigations of the TRC cases after the refusal of SAPS to do so. This also included a request for Mr. Ledwaba to make two DSO investigators available and to sign the declarations in terms of section 28, which had already been submitted in May 2003. The letter of 11 November 2003 is attached as annexure "**AD12**". No response was received to Mr. Ledwaba's letter.
- 40 On 8 December 2003, NDPP Mr Ngcuka, acting in terms of section 28(1)(b) of the NPA Act, instructed Mr. Ledwana to have the 4 (four) TRC cases specified in the referral investigated by the DSO. The referral included 3 (three) of the cases I had previously submitted for authorisation of the investigations to Mr. Ledwaba in May 2003. I attached a copy of the referral by Mr. Ngcuka as annexure "**AD13**".
- 41 Sometime before February 2004, Mr. Leask informed me that, due to Mr. Ledwaba's decision not to investigate, he had been unable to comply with my instructions regarding the investigation of the Timol matter. However, because

Mr. Powell was now a member of the DSO, Mr. Leask had asked Mr. Powell about the alleged disclosure by Sergeant Rodrigues's daughter. Mr Leask informed me that Mr Powell had denied all knowledge thereof and had supplied Mr Leask with an article he had published relating to the Timol matter, which contained no such disclosures.

42 In February 2004, I received a fax from Mr. Cajee inquiring about the request he made to me in May 2003.

43 On 25 February 2004, I informed Mr. Cajee that the allegations relating to Mr. Powell had, in fact, been followed up with negative results. I confirmed that he had supplied certain documents at the time he made his request, but requested that he provide the document in his possession relating to a detainee, which I did not have. I also asked him to provide any additional materials he may have. My letter of 25 February 2004 is attached as annexure **"AD14"**.

44 I did not receive a response to my letter from Mr. Cajee.

45 On 26 February 2004, Mr Ngcuka referred two further TRC cases to Mr. Ledwaba in terms of section 28(1)(b) of the NPA Act. I was now confident that the issue of investigations would be resolved. However, shortly thereafter, I was assigned duties that took me away from TRC matters; I had to deal with an international nuclear weapons syndicate case and numerous other responsibilities. I attached hereto Mr Ngcuka's referral as annexure **"AD15"**.

NDPP MR VUSI PIKOLI'S TERM (1 FEBRUARY 2005 - SEPTEMBER 2007)

46 Mr Vusi Pikoli became the NDPP on 1 February 2005. At that stage, I was still fully occupied with the nuclear weapons case, which remained the position until September 2007, when the prosecution was successfully concluded.

47 After the completion of the prosecution of the nuclear weapons case, I was not immediately assigned to TRC matters.

48 In October 2006, Mr Pikoli established the TRC Committee (also known as the Task Team) the purpose of which was to focus exclusively on TRC matters.

49 The Task Team was established pursuant to an amended NPA Prosecution Policy, which had come into effect on 1 December 2005. I was not involved in the process, except for attending 2 to 3 meetings on Mr Ackermann's instructions. I acquired documentation relating to the composition of the task team and the minutes of its first meeting on 12 October 2006. I attach a copy of the list of members as well as the minutes of the first meeting as annexure "AD16" and "AD17" respectively.

50 Mr Pikoli was suspended in September 2007.

ACTING NDPP MR MOKOTEDI MPSHE'S AND NDPP MR MENZI SIMELANI'S TERMS OF OFFICE

51 Mr Mpshe was appointed as the Acting NDPP following Mr Pikoli's suspension.

- 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 – Sipho 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.

- 56 On my return, I engaged with Police Commissioner Jacobs, who was a member of the TRC Committee (also known as the Task Team), and Mr. P. Richer, a Deputy Director General in the NIA, who was also in attendance at the TRC Committee meetings I had attended. Both Commissioner Jacobs and Mr. Richer agreed with me that investigations should progress, subject to approval by their principals and under the same auspices that the TRC Committee had operated.
- 57 In early 2009, my discussions with Commissioner Jacobs and Mr. Richer had progressed to a stage where I was confident that the TRC Committee (also known as the Task Team) would reconvene. In this regard, the acting NDPP, Mr. Mpshe, reported accordingly to the Minister. A copy of the ministerial memo is attached as annexure “**AD20**”.
- 58 The TRC Committee (also known as the Task Team), however, never reconvened.
- 59 During this period, I was also appointed to a project established by the Financial Action Task Force (**FATF**). South Africa was a member of FATF and was obliged to comply with all FATF’s directives relating to money laundering and the financing of money laundering.
- 60 As a result of the nuclear prosecution, FATF established a project to determine whether to issue directives on nuclear proliferation financing. Due to my prosecution of the nuclear weapons case, I was appointed to represent South Africa in the FATF project.

- 61 In order to ensure that TRC cases would be investigated, and at the specific request of Mr. Mpshe, I commenced engaging directly with Commissioner Lalla, who was now the Divisional Head of the Detective Services of the SAPS. After a series of meetings, he agreed to set up a project team composed of former Police officers who had joined the DSO but were now returning to SAPS as a result of the DSO's dissolution. All these members had prior experience with investigating TRC Cases. I attach as annexure "**AD21A**" a trail of emails between myself and Mr. Mpshe, Dr. Ramaite, and Mr. Ackermann, and Mr. Mgwengwe of the NPA from 18 May 2009 to 20 May 2009 confirming an agreement with Commissioner Lalla that he would appoint a project team of former DSO investigators who had experience with TRC matters.
- 62 I was thereafter informed by Commissioner Lalla that the National Commissioner of Police has decided that, with the establishment of the Directorate of the Priority Crimes Investigations ("**DPCI**"), the investigation of TRC cases should be the responsibility of DPCI.
- 63 Commissioner Lalla informed me that he would facilitate a meeting with General Anwa Dramat to arrange for the DPCI to conduct the investigations. I attach as annexure "**AD22A**" an email dated 1 July 2009 addressed to the Superintendent, Colla Buzuidenhout, who was Commissioner Lalla's staff officer, in which I requested a meeting with Commissioner Lalla. I attach hereto as annexure "**AD22B**" her email of 07 July 2009, in which it was advised that Commissioner Lalla had agreed to the meeting but that Commissioner Dramat should be present. It was also advised that the meeting would be on 20 July 2009. Also on 07 July 2009, I sent an email to Dr. Ramaite, copying Mr.

Ackermann, confirming the meeting of 20 July 2009 with Commissioners Lalla and Dramat. I, however, advised that I requested Commissioner Dramat to appoint an investigating officer for the Lubowski case, because the matter was due to prescribe shortly, which is attached hereto as annexure **"AD22C"**. I attach herein as annexure **"AD22D"** an email sent by Ms. Zwart of the PCLU to Superintendent Colla Buzuidenhout, emphasising the urgency. On 14 July 2009, Commissioner Lalla's office advised that Commissioner Dramat was no longer available for the meeting, which would now have to be moved to August 2009. Attached hereto as annexure **"AD22E"** is an email dated 15 July 2009 informing Dr. Ramaite that I had agreed to the meeting being postponed to August 2009, but insisting that an investigating officer be immediately appointed to investigate the Lubowski matter. In fact, an investigator was appointed on 27 July 2009. I attach as annexure **"AD22F"** an email addressed to Mr. Hofmeyr and Dr. Ramaite, again dealing with the urgency of the Lubowski matter. I attach as annexure **"AD22G"** a trail of emails dated 26 August 2009 to 28 August 2009 between myself, Commissioners Lalla, and Dramat is staff officers calling for a meeting with the two Commissioners to discuss TRC investigations. Commissioner Dramat's secretary, however, advised that he was unable to meet with me.

- 64 I, however, secured a meeting with Assistant Commissioner Lebeya ("Commissioner Dramat's deputy"). In 26 November 2009. At that meeting, Assistant Commissioner Lebeya agreed that the Crimes Against the State (CATS) component of the DPCI would conduct the investigations. Due to security operations related to terrorist threats aimed at disrupting the 2010

World Cup, he advised that the investigations would commence only after the World Cup concluded. On 18 January 2010, I wrote to Commissioner Lebeya confirming his undertaking regarding TRC cases. I attach hereto as annexure “**AD23**” a copy of the letter. I note that I have not been able to locate page two of the Letter.

65 In March 2010, I nevertheless tasked out the investigations to the DPCI so that, when they were ready to investigate, they would already know what was required of them. After the conclusion of the World Cup, the investigations commenced; however, only three investigators were allocated to conduct the investigations. In addition, the investigators had no previous experience in TRC matters and also had other responsibilities relating to the investigation of State Security matters.

66 I was also tasked with other responsibilities, including an instruction from the NDPP, Mr. Simelane, to guide investigations into corruption cases in the Northern Cape.

ACTING NDPP MS NOMGCOBO JIBA’S TERM

67 When Mr. Simelane was placed on special leave, Ms. Nomgcobo Jiba commenced acting as NDPP. She acted as NDPP until the appointment of Mr Nxasana was appointed as NDPP in October 2013. During this period, I continued guiding the TRC investigations in addition to carrying out substantial non-TRC related work.

NDPP MR MXOLISI NXASANA'S TERM (OCTOBER 2015 - MAY 2015)

68 In October 2013, Mr Mxolisi Nxasana was appointed as the NDPP. Following his appointment, Mr Nxasana removed me from the PCLU and assigned me to manage investigations into corruption offences within the scope of the Organisation for Economic Co-operation and Development (“**OECD**”). Given the complexity of the OECD matters, Mr Nxasana determined that I would be best suited to manage them.

69 I was in the OECD from 2014 until June 2015. Whilst at the OECD, I was not involved in TRC cases, except to furnish an opinion on one matter in which an application to compel a decision had been brought.

NDPP MR SHAUN ABRAHAM'S TERM (JUNE 2015 - AUGUST 2018)

70 Mr. Abrahams was appointed as NDPP in June 2015. He decided that I should continue with the OECD portfolio, but this was being frustrated because I no longer had access to the dockets, as another colleague, Mr. Mwrebi, had taken the dockets from my control.

71 In October 2015, Dr. Pretorius was appointed as the Head of the PCLU. Due to the impasse with the OECD, I offered to assist Dr. Pretorius with the TRC matters should he require it.

72 Prior to me being involved in the OECD matters, I had requested the police to investigate the death in detention case of Dr. Neil Aggett. During October

2015, I had become aware of a television interview with Mr George Bizos SC, the counsel who had represented the Timol family in the original inquest into Mr Timol's death.

73 During the interview, Mr Bizos stated that Mr Timol had been murdered and that the police had lied at the inquest. I was aware that the police were already investigating the Dr. Aggett matter. I, on 30 October 2015, emailed the DPCI requesting that they investigate the Timol matter. A copy of this email is an annexure to my supporting affidavit filed in *Rodrigues v NDPP 2019 (2) SACR 251 (GJ)* matter, which is already filed with the Commission.

74 I also started assisting the DPCI with the investigation of both the Timol and Aggett matters by locating documentation, identifying witnesses, and requesting Ms. Fullard, the head of the NPA Missing Persons Task Team ("MPTT"), to retrieve archival material. Ms. Fullard had previously worked as a researcher at the TRC and was in a better position to access the material than the police.

75 On 4 February 2016, Dr Pretorius informed me that he had a meeting with Advocate Varney and his team, Webber Wentzel Attorneys, and the Foundation for Human Rights, who were requesting that the NPA reopen the inquests into the deaths of Mr Timol and Dr Aggett. On the same date, I provided Dr. Pretorius with an opinion on the work done on both matters and recommended that a decision on reopening the inquests should only be taken when both cases had been fully investigated to determine whether murder

charges could be instituted. A copy of my opinion is attached as annexure “**AD24**”.

- 76 I continued to work on both the Timol and Aggett matters until I was instructed by Dr Pretorius to lead a DPCI investigation into terrorist activities occurring in the Johannesburg area. Dr Pretorius assumed control not only of the Aggett and Timol matters but also of the entire TRC Portfolio.
- 77 In paragraph 7.2.3 of my above opinion and in relation to the Aggett matter, I complain of the difficulty in the online reading of the electronic inquest on the Wits website. I, however, point to the burden of printing 8,500 pages on the office printer. Mr. Cajee cites this as displaying a lack of interest. The true position is that the PCLU staff shared a single printer, not suitable for bulk printing. As a result, arrangements were made to have the digital record emailed in small batches. Thereafter, approval was obtained to get a printing office to print two copies of the record. I attach as “**AD25**” the email exchange between the PCLU admin officer and the Wits official.
- 78 In 2017, Dr. Pretorius decided to apply to reopen the Timol inquest. I was still working on the terrorism cases at this time. I, however, was aware that the inquest was reopened. As a result of the findings of the Court, a prosecution on the charge of murder was instituted against Sergeant Rodrigues.
- 79 In late 2018, I was informed by Dr. Pretorius that Sergeant Rodrigues had applied for a stay of prosecution. My assistance was sought in responding to the allegations made in the application.

80 On 1 November 2018, I deposed to a supporting affidavit on behalf of the NDPP, the first respondent to the application. As indicated above, a copy of this affidavit has already been filed with the Commission.

NDPP MS SHAMILA BATOHI'S TERM (1 FEBRUARY 2019 - 31 JANUARY 2026)

81 Ms. Batohi became NDPP on 1 February 2019.

82 In March 2019, she informed me that she was appointing me as the Head PCLU and nodal point for the State Capture Commission. I was also required to exercise oversight over the MPTT. The Minister appointed me as an acting Special Director in April 2019.

83 By virtue of my appointment as Acting Special Director, I became seized with the TRC matters. In this capacity, I handled and oversaw TRC matters until September 2021, when the decision was made to remove the TRC cases from the PCLU.

84 I commenced with an audit of all cases falling within the PCLU mandate. I discovered that there was a backlog, which I attributed to trying to manage cases across the country with a small staff based in Pretoria. At that stage, the PCLU was staffed by Dr. Pretorius, Ms. Bukau, one admin officer, and I.

85 In respect of TRC cases, Brigadier Xaba of the CATS unit provided me with details of approximately 30 cases under investigation, which included some of those I had referred to the DPCI in 2010. I established that only four of the

cases were receiving dedicated attention from a prosecutor. Shortly thereafter, Brigadier Xaba's commander, General Ledwaba, requested me to appoint prosecutors for all the cases.

86 Reviewing the dockets, I had concerns regarding the quality and pace of the investigations, which in part I attributed to the absence of any research capability and other resource challenges. As stated above, some of the cases referred to in 2010 were still not finalised. I expressed my concerns in this regard in an email dated 3 May 2019 to the NDPP, copying Mr Mzinyathi, who was the DNDPP and head of NPS. The NPS was the component under which the PCLU and all other prosecution units fell, including all the DPPs. A copy of the email is attached as annexure "**AD26**".

87 This led to a discussion with the NDPP, who agreed to set up a meeting with General Lebeya, the Head of the DPCI.

88 In May 2019, I submitted a proposal to the NDPP that the PCLU adopt a decentralised model, with cases being managed by the DPPs in the areas where the crimes were committed. The PCLU would exercise an oversight and support function. This proposal was adopted by the NDPP and her Executive Committee at the end of May 2019.

89 As a result of this policy, the DPPs were required to appoint senior staff members to serve as nodal points between the PCLU and their offices. I would be required to refer cases to the nodal points, who would allocate them to individual advocates. The nodal points would manage the work of the

advocates and report progress to me monthly. I would consolidate the reports and add work done by the PCLU. The report would be submitted to the Head of NPS.

- 90 The nodal points were appointed in June 2019 and received a week's training in July of the same year.
- 91 Ms. Bukau of my office opened a file for each TRC case. I copied her on all my emails regarding the cases. Every morning, she would print emails from the day before and file them. All other documents relating to the cases were put in the files as soon as they were received. Brigadier Xaba was informed to submit the police dockets to the nodal points.
- 92 Shortly thereafter, in 2019, the nodal points in offices far from the investigators (who were all based in Pretoria) complained that the investigators were not readily accessible to them. As a result, in 2019, I met with General Ledwaba and requested that she appoint investigators in the DPCI regional offices for the DPP offices outside Gauteng. This request was refused.
- 93 As to research capability, I approached the NPA's research office, which made two researchers available. They conducted research but were constrained by a lack of relevant historical knowledge of TRC matters. This made it difficult to locate and evaluate material. I then initiated the process of appointing a former TRC researcher on a contract basis to conduct part-time research. With the onset of COVID-19 in early 2020, it was not possible to secure the

appointment. I then used the MPTT because its staff included two former TRC researchers with the necessary expertise.

94 As a result of the nodal point system, progress started to be made on the cases. Several cases in different provinces could be addressed simultaneously. There was, however, still a problem with having all the cases being investigated by investigators based in Pretoria.

95 In January 2020, Ms. Batohi, Mr. Mzinyathi, and I met with General Lebeya and explained our concerns regarding investigations. The General agreed to obtain approval to appoint experienced retired police officers on 3-year contracts to work full-time on TRC cases. As an interim measure, he also agreed to use regional investigators when appropriate. Due to the COVID-19 pandemic, the appointment of contract investigators only took place in mid-2021.

96 Beginning in March 2020, a series of lockdowns was imposed to contain the spread of COVID-19. This impacted negatively on the work. Offices, archives, and other record centres were closed, and travel restrictions were imposed. I, however, remained at the office seven days a week. When the office closed due to infections, Mr. Mzinyathi and I met in the parking lot to discuss urgent work matters.

97 I took advantage of the initial lockdowns to identify all deaths in detention matters reported by the TRC and other organisations. After removing the cases already under investigation, I was left with about 59 cases. With the

promise of extra investigators and the ability to distribute the cases across the provinces, I was confident they could all be investigated.

- 98 In April 2020, Mr. De Kock replaced Mr. Mzinyathi as Head of NPS.
- 99 On 25 May 2020, I furnished him with a breakdown of investigations and alerted him that I wanted a number of further cases investigated, which would require additional police capacity. A copy of my report is attached as annexure “**AD27**”.
- 100 Shortly thereafter, Mr. De Kock wrote to General Lebeya, informing him of the additional cases and that this would require additional investigators. A copy of the letter is attached as annexure “**AD28**”.
- 101 The requested meeting took place, and the General undertook to address the issue of additional investigators but noted constraints due to COVID.
- 102 By this time, the effects of COVID were taking their toll. At least one investigator and prosecutor died. Many more were seriously affected. There were, in addition, frequent changes in DPPs, nodal points, and prosecutors. In certain instances, certain nodal points failed to show progress in their monthly reporting, and some even failed to report at all. This was referred to in my reports to Mr. de Kock, and the two of us raised this in the DPP meetings.
- 103 COVID also affected the reopening of the Dr. Haffee and Dr. Aggett inquests, but ultimately, they began with virtual hearings. Microsoft Teams also enabled

me to communicate directly with prosecutors in the regions. This, however, was impacted by Eskom's load shedding.

104 Notwithstanding these challenges, as at 30 November 2020, 53 cases had been referred to the DPPs, while a further 46 were awaiting additional resources before referral. Another 10 cases were awaiting more information about where the crimes had been committed before they could be referred. There were also three foreign cases, bringing the total to 112. I attach herewith as annexure “**AD29**” the report by Ms. Bukau dated 30 November 2020.

105 In December 2020, a workshop was held between the DPCI and NPA to address issues impeding progress with the cases. It was accepted that using prosecutors who were seized with other duties was no longer practical. It was therefore decided to apply for permission to employ prosecutors on contract to work full-time on TRC cases, as the police were trying to do with investigators.

106 In January 2021, I requested the DPPs to indicate how many new prosecutors they each required. Once this information was received, the NPA's human resources section was requested to obtain the necessary financial approvals, which required permission from the Department of Public Service Administration. Due to the Department of Public Service Administration's reluctance, financial approvals were obtained only in September 2021.

107 Also in 2021, the Ernest Dipale inquest was reopened, and the DPP in Johannesburg instituted the prosecution of the Cosas 4 case. Work on other cases progressed.

108 In mid-September 2021, Mr. De Kock informed me that the decision had been taken to immediately take the TRC cases away from the PCLU. They were now to be managed by the NPS. I then signed off my files, and Ms. Bukau compiled a report detailing all cases as at 20 September 2021. A copy of the report is attached as annexure **AD30**. The total number of cases now stood at 114.

109 The report showed that the DPP Eastern Cape failed to report on a number of the referred cases. It must be said, however, that the office was fully occupied with the Cradock 4 case, which also included a civil action.

110 In my view, progress was made under difficult conditions by prosecutors and investigators working on the cases, despite their other responsibilities. I did not take a single day's leave in 2021.

111 I tried to assist the prosecutors and investigators as much as possible by providing advice and locating documentation they did not have access to. I noted that the case of Mr. Bayempini Mzizi was linked to that of Dr. Haffejee and advised the prosecutor accordingly. I attach as annexure "**AD31**" a copy of my email dated 24 June 2021, which provides all the necessary guidance. I also detected that the case of Mr. Ernest Dipale was linked to that of Dr. Aggett. I located all the relevant material. This case was not dealt with by the

TRC. I attach as annexure “**AD32**” the exchange of emails between the prosecutor and I of 26 February 2021, in which the prosecutor updates me on developments with the inquest, and I give further advice.

112 I also instructed that the Griffiths Mxenge, and Rick Turner cases be reopened after I learned that a witness in another case claimed to have new information. I assisted the MPTT in locating the records of an exhumation of the body of Ms. Ntombi Khubeka, which had been done by the TRC. The MPTT re-exhumed the body, and DNA testing established that the wrong body had been exhumed by the TRC.

113 The MPTT made a significant contribution to progress in investigating cases by retrieving archived material, drawing links between cases, and tracing witnesses whose whereabouts were unknown to the investigators. This was all done over and above their primary duties.

114 On 31 October 2021, I retired from the NPA.

THE ALLEGATIONS MADE BY MR CAJEE RELATION TO ME

115 In relation to the allegations made by Mr Cajee about me, I deny that I was reluctant or unwilling to prosecute TRC matters, or that I failed to seek to have the cases investigated by the investigative agencies. I also deny that, at the time he met me in May 2003, he informed me that the disclosures made by the daughter of Sergeant Rodrigues had been made to Piers Pigou, and that he gave me a TRC file compiled by Mr Pigou relating to the matter. Mr Pigou

was well known to me as we had both been in the TRC, and I would never have confused him with Ivor Powell.

116 The allegation of reluctance on my part to prosecute the Timol matter is revealed to be untrue when regard is had to the facts I have set out above. I believe my energy and efforts to advance TRC related matters despite the challenges which I have mentioned above speaks for itself. I had no wish nor motive not to advance the Timol.

117 From January 2001 to July 2009, the investigation of crime rested with the DSO and the police. My short stint in the DSO was as a prosecutor and not as an investigator. From July 2009 to September 2021, the responsibility for investigating crime rested exclusively with the police. My duty as a prosecutor was confined to giving guidance to such investigations and performing prosecutorial functions. In this affidavit, I have set out all my efforts to have TRC cases investigated.

118 I appreciate Mr. Cajee's frustrations and pain over his uncle's case not being investigated in a timely manner. I deny any dereliction of duty on my part and further deny any need or attempt to conceal the alleged dereliction of duty. I also reject his further allegation that I, as a prosecutor prior to April 1994, protected my former colleagues from prosecution. I have demonstrated all my efforts and the extent to which I went to have the matters prosecuted.

119 I wish to draw the Commission's attention to an email I received from Mr. Cajee on 16 April 2022 informing me that I had discovered important information

relating to his uncle's death, of which he was unaware, and asking that I share it with him, which I did. The email correspondence is attached as annexure "AD33".

120 I further deny any political interference in any decisions I had to make in regard to the prosecution of the matter. To the extent that the Mr Cajee alleges that the notion of political interference was introduced by me, I deny this. I must say, however, that it is not entirely clear to me what Mr Cajee ultimately contends - that is whether he suggests that there was political interference or that there was no political interference, but this notion introduced to conceal what he believes to be a dereliction of duty.

121 As is apparent from what I have set out above, I further deny:-

121.1 that I failed to earnestly follow up on the leads that Mr Cajee furnished;

121.2 that I unlawfully placed the burden of investigating his uncle's death on him.

122 The logistical and resource-based constraints that we iopperatedunder has been set out in detail in earlier parts of my statement. At no stage did I place any onus on Mr Cajee. Whilst I probably invited him to supply any additional information to assist with the case this in no way shifted the ultimate investigative responsibility on to him.

123 The finalisation of this statement has been somewhat rushed due to the endeavour to meet the agreed filing date with the Commission. I may wish to supplement this statement in a further statement or when I testify before the Commission.

RAYMOND CHRISTOPHER MACADAM

3 March 2026

er/breakdown



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

INTERNAL MEMORANDUM

TO: ACTING HEAD, DSO

FROM: HEAD: SNPU

REF: A/INV/TRC

DATE: 10 FEBRUARY 2003

RE: BREAKDOWN OF TRC INVESTIGATIONS

SCORPIONS

P. O. Box 752,
PRETORIA
0001

VGM Building
Hartley St.
Weavind Park
0001
Pretoria
South Africa

TRC INVESTIGATIONS

1/02

MAMELODI 10 AND OTHER CASES - CHARGE: MURDER

Referral

Request by DNDPP that the DSO honour an undertaking given to the Mamelodi community that the bodies of the deceased would be located in return for co-operation by the community in the investigations.

Nature of Case

Security forces targeted the comrades in Mamelodi. Three separate murders were committed in different parts of the country. The TRC held separate amnesty hearings for different groups of perpetrators causing confusion as to the identities of all the perpetrators.

Tel: (012) 845 6432

E-mail:

cmacadam@npa.gov.za

Nature of Investigators

(i) Location of original police dockets and mortuary related documents;

2

- (ii) Verification of D'Oliveira Investigating Unit section 204 witness's allegations;
- (iii) Identification of all perpetrators;
- (iv) Identification of witnesses;
- (v) Identification of alleged burial site of victims;
- (vi) Location of original inquest records;
- (vii) Exhumation process;
- (viii) Identification of remains by DNA analysis;
- (ix) Re-opening of inquests and possible prosecution of section 204 witness (if original statement proved false) and perpetrators who did not receive amnesty.

Role Players

- (i) Researchers to trace all TRC material;
- (ii) SAPS DNA laboratory to conduct DNA tests;
- (iii) Chief State Pathologist to conduct exhumation and fresh **post mortems**;
- (iv) SAPS Services and Violent Crime to provide expertise in exhumation;
- (v) Khumani support group to liaise with victims' families.

2/02

CCB Western Cape Activities

Referral

Legal Resources Cape Town request for prosecution of unsuccessful amnesty applicants for the following crimes:

- (i) Bombing of Early Leading Centre;
- (ii) Conspiracy to kill Dullah Omar;
- (iii) Conspiracy to kill Glavin Evans.

Nature of Investigations

- (i) Identify certain amnesty applicants as section 204 witnesses and others as accused;
 - (ii) Identify the strongest of the three cases;
 - (iii) Establish the links between these charges and the Wouter Basson trial where the same role players were involved;
 - (iv) Locate the original police dockets and the initial investigation done by the DPP Cape Town;
 - (v) Locate the TRC material;
- 

- (vi) Liaise with Legal Resources Centre for access to their material and victims who may be used as state witnesses;
- (vii) Locate evidence in the possession of the original firm of Attorneys of the victims;
- (viii) Institute a prosecution.

Role Players

- (i) Researchers to locate all background material;
- (ii) Dr Pretorius to assist with the Wouter Basson related issues;
- (iii) SAPS and DPP to advise on their investigations;
- (iv) Legal Resources and other legal firms to make available their material.

3/02

CARL NIEHAUS - CHARGE ASSAULT

Referral

Investigation by Head DSO to investigate allegations that Niehaus was tortured in detention.

Nature of Investigation

Background information and victim traced. Victim however did not desire a prosecution and file closed. Report submitted to Head, DSO.

4/02

THO HANDGRENADE ATTACKS

Charge

Possession of Grenades and Terrorism.

Referral

DPP Free state requested decision to be made on former APLA Commander.

Investigation

Evidence thoroughly perused and opinion furnished that there were no prospects of a successful prosecution. Charges were withdrawn and reports furnished to Head DSO and NDPP. Case closed.



5/02

SKOULIDES - CHARGE MURDER**Referral**

Victim's sister alleged that her brother had been framed for a murder committed by the security forces.

Nature of Investigation

- (i) Locate original murder docket and court record;
- (ii) Locate TRC investigation which alleged that the wrong person had been convicted;
- (iii) Establish if any other persons were responsible and if so whether a prosecution can be instituted.

Other Role Players

- (i) Researchers to obtain all the relevant background material;
- (ii) DPP and SAPS to furnish details of original trial;
- (iii) Former TRC investigator to explain the nature of his investigation.

6/02

KWAGGASNEK LESOTHO INCIDENT - CHARGES MURDER**Referral**

NDPP instructed that the remains of PAC members murdered in Lesotho be brought back to RSA.

Nature of Investigation

- (i) Trace next of kin of victims;
- (ii) Locate burial site in Lesotho;
- (iii) Establish exhumation and repatriation requirements from SA Foreign Affairs and Lesotho Government.
- (iv) Repatriate remains.

Role Players

- (i) Victims next of Kin;
 - (ii) Lesotho Government;
 - (iii) SA Foreign Affairs.
- 

7/02

TABLE MOUNTAIN MASSACRES - CHARGES MURDER**Referral**

DNDPP Hofmeyer requested that the matter be looked into.

Nature of Investigation

- (i) Provisional Head of Detective Service informed that the docket had been lost, the investigating unit disbanded and the investigating officer had left the force;
- (ii) The DPP KZN confirmed that her records had been destroyed and the prosecutor had resigned and emigrated;
- (iii) The TRC's final report will have to be awaited before any further action can be taken.

8/02

BATONDO / TRANSKEI - CHARGE MURDER**Referral**

Refusal of amnesty by TRC.

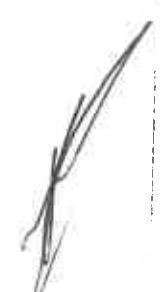
Nature of Case

An ANC supporter was shot dead by members of the Transkei police. They absconded before a prosecution could be instituted. It later emerged that they were hidden at Vlakplaas and given new identities.

Investigation

- (i) Locate original police docket;
- (ii) Locate original DPP's file;
- (iii) Locate TRC material (amnesty and Vlakplaas);
- (iv) Trace role players and consider prosecutions.

Other Agencies

- (i) Researchers
 - (ii) DPP Umtata
- 

9/02

SAP GENERAL VAN RENSBURG. MOTHERWELL/BRIAN NGULUNGA KILLINGS**CHARGES: MURDER****Referral**

Refusal of Amnesty

Nature of Case

It is alleged that General Van Rensburg ordered the killing of five security force members to prevent them from revealing how he was involved in third force activities. In the Motherwell matter three other security force members were convicted but have noted an appeal against their convictions. They have also applied for amnesty. Van Rensburg was refused amnesty but has noted a review with the High Court. In the Ngulunga matter Van Rensburg never applied for amnesty but was implicated by the applicants.

Investigations

- (i) DPP Grahamstown has requested the unit to take over the SCA appeal;
- (ii) TRC and Justice have requested to assist in setting up the new amnesty hearings;
- (iii) Locate original inquests;
- (iv) Police dockets;
- (v) Trace original witnesses;
- (vi) Conduct new investigations arising from amnesty hearings;
- (vii) Extract the relevant positions from the De Kock trial;
- (viii) Locate criminal records and civil material in possession of the State Attorney and Registrar;
- (ix) Prepare for prosecution after amnesty process completed.

Other Agencies

- (i) Researchers;
 - (ii) DPP Grahamstown;
 - (iii) State Attorney Cape Town
 - (iv) TRC
 - (v) Department Law Enforcement Justice
 - (vi) Registrar Cape Town, Port Elizabeth and Bloemfontein.
- 

10/02

SAP GENERAL VAN DER MERWE / LESOTHO RAID - CHARGE: MURDER

Referral

Amnesty Refused

Nature of Case

Raid by security forces on ANC base in Lesotho.

Investigations

- (i) Awaiting outcome of state appeal in S versus Basson on jurisdiction on conspiracy to commit crimes. In the light of the Basson judgment the RSA courts have no jurisdiction;
- (ii) Locate TRC material;
- (iii) Locate State Security Council material;
- (iv) Locate material in possession of Lesotho Government;
- (v) Locate material in ANC possession.

Other Agencies

- (i) Researchers;
- (ii) State Archives;
- (iii) ANC;
- (iv) Adv Pretorius.

/02

IFP / ERMELO BLACK CATS - CHARGES: MURDER

Referral

Refusal of Amnesty

Nature of Case

Series of attacks on ANC supporters by IFP Investigation originally conducted by D'Oliveira Unit. Section 204 witnesses however refused amnesty. Several accused however were arrested and continue to appear in court.

Nature of Investigations

- (i) Locate original investigation;
- 

- (ii) Locate Registers records;
- (iii) Locate Goldstone Commission Investigation;
- (iv) Locate TRC material;
- (v) Trace witnesses;
- (vi) Decide whether to prosecute.

Other Agencies

- (i) Researchers;
- (ii) State Archives;
- (iii) Register and DPP Pretoria.

2/02

IFP VERSUS TRC - CHARGE: CIVIL APPLICATION

Nature of Case

IFP brought an application to have the TRC's findings that it committed Human Rights Abuses set aside.

Nature of Investigations

- (i) Request by both the TRC and Justice that this unit make its material implicating the IFP available.
- (ii) Watching brief on the proceedings declares since it impacts on investigations involving the IFP;
- (iii) On 29 January 2003 the matter was settled on the basis that the TRC's findings would stand;
- (iv) File closed.

13/02

NTOMBI KHUBEKA - CHARGE: KIDNAPPING MURDER

Referral

Refusal of Amnesty

Nature of Case

ANC supporter kidnapped and tortured. Applicants members of KZN SAP Security Branch denied killing her. Medical evidence however established that she was shot to death.



Nature of investigations

- (i) Locate TRC material;
- (ii) Locate medical expert brought in by TRC from United Kingdom;
- (iii) Locate D'Oliveira investigation;
- (iv) Trace witnesses and in particular section 204 ones;
- (v) Prepare for prosecution.

Other Agencies

- (i) Researchers;
- (ii) Medical expert.

1/02

PHILIP POWELL - CHARGE: POSSESSION OF HAND GRENADES**Referral**

NDPP

Nature of Case

Powell received 70 tons of weapons from Vlakplaas Commander De Kock prior to 1994 election.
Powell fled to UK prior to NDPP deciding to prosecute him.

Nature of Investigations

- (i) Locate D'Oliveira investigation;
- (ii) Extract relevant portions of De Kock trial;
- (iii) Locate ITU investigation and KZN Government documentation;
- (iv) Locate Goldstone Commission enquiry;
- (v) Locate DPP KZN's files;
- (vi) Locate witnesses;
- (vii) Obtain military expert to identify origin of explosives;
- (viii) Follow up Police Intelligence allegations that Powell returned to RSA;
- (ix) Establish Powell's whereabouts in UK;
- (x) Advise NDPP to set aside DPP KZN's decision not to prosecute.

Other Agencies

- (i) Researchers
- (ii) State Archives;
- (iii) NIA;
- (iv) Police Intelligence
- (v) Defence Intelligence
- (vi) Nick Rowell (UK involvement)
- (vii) DPP KZN

15/02**PIET SNYDERS - CHARGE: MURDER****Referral**

DSO Chinese Syndicate Investigation.

Nature of Case

Subject was a member of Vlakplaas who was involved with De Kock. DSO has advised that he is actively involved in current organized crime and is interested to know whether he can be charged for a TRC case so as to disrupt his activities.

Nature of Investigations

- (i) Trace TRC material;
- (ii) Interview De Kock and other Vlakplaas operators;
- (iii) Establish if there is a strong case in respect of which he was refused or failed to apply for amnesty.

Other Agencies

Researchers

16/02**KZN IFP HIT SQUADS - CHARGE: MURDER****Referral**

Failure to apply for amnesty by perpetrators.



Nature of Case

KwaZulu-Natal Police officers implicated several high ranking IFP officials as ordering a series of murders. None of the implicated parties applied for amnesty however the DPP KZN declined to prosecute. The persons implicating them were all granted amnesty.

Nature of Investigations

- (i) Locate ITU investigation;
- (ii) Locate Goldstone Commission Enquiry;
- (iii) Locate original KZN Police dockets;
- (iv) Locate TRC material;
- (v) Locate High Court record of State versus Hlongwane and two others;
- (vi) Trace witnesses;
- (vii) Advise NDPP whether DPP KZN's decision can be overturned.

Other Agencies

- (i) Researchers
- (ii) State Archives
- (iii) DPP KZN

17/02**VICTORIA MXENGE - CHARGE: MURDER****Referral**

Of Public Interest

Nature of Case

The subject was the wife of Griffiths Mxenge the ANC lawyer who was murdered by Dirk Coetzee and other Vlakplaas operatives. Her murder however remains unsolved.

Nature of Investigations

- (i) Locate original inquest and police docket;
 - (ii) Locate TRC material;
 - (iii) Follow up information relating to Askaris and former KZN security branch member;
 - (iv) Establish if the crime can be solved.
- 

Other Agencies

Researchers

18/02

MPHAHLELA APLA KILLINGS - CHARGE: MURDER

Referral

High Public Interest / Failure to apply for Amnesty

Nature of Case

The subject was a senior member of APLA and suspected of orchestrating many of APLA's murders in the early 1990's. He did not apply for amnesty and has never been charged.

Nature of Investigations

- (i) Locate original SAP investigations into APLA attacks;
- (ii) Debrief original SAP investigators;
- (iii) Debrief SAP Intelligence operators;
- (iv) Locate original court records where prosecutions of subjects' subordinates instituted;
- (v) Trace witnesses;
- (vi) TRC material;
- (vii) Goldstone Commission Enquiries;
- (viii) Establish if there are grounds to prosecute on any charges.

Other Agencies

- (i) Researchers
- (ii) SAPS Detective Service
- (iii) SAPS Intelligence Service
- (iv) DPP's
- (v) NGO organizations with a special interest in APLA.

19/02

STEVE BIKO - CHARGE: MURDER

Referral

Refusal of Amnesty

Nature of Case

Subject died in police detention. Amnesty refused DPP Grahamstown declined to prosecute.

Nature of Investigations

- (i) Locate original inquest;
- (ii) TRC material;
- (iii) Material in possession of Legal Resources Centre;
- (iv) Locate sole surviving medical expert;
- (v) Advise NDPP whether DPP Grahamstown's **nolle prosequi** should be overturned.

Other Agencies

- (i) Researchers
- (ii) Medical experts
- (iii) Legal Resources Centre
- (iv) DPP Grahamstown

20/02

PEBCO 3 - CHARGE: KIDNAPPING/MURDER

Referral

Refusal of Amnesty

Nature of Case

1985 the PEBCO 3 disappeared without trace. The TRC refused amnesty to members of the Eastern Cape Security Branch for their Kidnapping and murder. The DPP Grahamstown refused to prosecute.

Nature of Investigations

- (i) Locate original SAP investigation;
 - (ii) Locate civil claims instituted by deceased's family;
 - (iii) Goldstone Commission Enquiries;
 - (iv) Relevant positions of State versus De Kok;
 - (v) TRC material;
 - (vi) Re-evaluate original section 204 witness;
 - (vii) Trace witnesses;
- 

- (viii) Determine whether DPP's decision should be overturned.

Other Agencies

- (i) Researchers
- (ii) State Attorney, Port Elizabeth
- (iii) State Archives
- (iv) Dr D'Oliveira

21/02

CRADOCK 4 - CHARGE: KIDNAPPING / MURDER

Referral

Refusal of Amnesty

Nature of Case

Cradock activists were kidnapped and murdered. A formal inquest before the Judge President ECD found that unknown members of the Security Forces were responsible. Amnesty was refused to members of the Eastern Cape Security Branch.

Nature of Investigations

- (i) Locate original police docket;
- (ii) Locate formal inquest before regional court President;
- (iii) Locate formal inquest before Judge President;
- (iv) Locate Goldstone Commission Enquiry;
- (v) TRC material;
- (vi) Locate witnesses;
- (vii) Determine whether there are grounds to prosecute.

Other Agencies

- (i) Researchers
 - (ii) NGO's
 - (iii) State Archives
 - (iv) Register Port Elizabeth
- 

22/02

WINNIE MANDELA - CHARGES: MURDER / KIDNAPPING**Referral**

High Public Interest: Failure to apply for Amnesty

Nature of Case

The DPP Johannesburg prosecuted the subject on a charge of kidnapping. In a HRV hearing of the TRC a large number of other serious charges were levelled at her. She never applied for amnesty. Commissioner Fivaz directed that these allegations be investigated.

Nature of Investigations

- (i) Locate original court record;
- (ii) Locate investigation by Commissioner Fivaz;
- (iii) TRC material;
- (iv) Trace witnesses;
- (v) Establish if there are grounds to prosecute.

Other Agencies

- (i) Researchers
- (ii) DPP Johannesburg
- (iii) SAPS Detective Service

23/02

SAP GEBNERAL ENGELBRECHT - CHARGE: DEFEATING THE ENDS OF JUSTICE**Referral**

High Public Interest / Failure to apply for Amnesty

Nature of Case

De Kok implicated the subject as assisting in covering up Vlakplaas killings. He did not apply for amnesty however the DPP Pretoria declined to prosecute him.

Nature of Investigations

- (i) Locate Haarms Commission;
 - (ii) Locate Goldstone Commission;
- 

- (iii) Locate inquest records of all killings;
- (iv) Extract relevant positions of De Kok's trial;
- (v) Access DPP report
- (vi) Trace witnesses;
- (vii) TRC material;
- (viii) Determine whether DPP's decision can be overturned.

Other Agencies

- (i) Researchers
- (ii) DPP Pretoria

24/03

SAP GENERAL SMIT - CHARGE: DEFEATING THE ENDS OF JUSTICE

Referral

High Public Interest / Failure to apply for Amnesty

Nature of Case

Similar allegations as against Engelbrecht however none of these have ever been investigated.

Nature of Investigations

- (i) Interview De Kok and other Vlakplaas operatives;
- (ii) Locate Haarms Commission;
- (iii) Locate Goldstone Commission Enquiry;
- (iv) TRC material;
- (v) Determine whether there are grounds to prosecute.

Other Agencies

- (i) Researchers
 - (ii) State Archives
- 

17

25/02

ANC HIERARCHY - CHARGES: TREASONReferral

Refusal of Amnesty

Nature of Case

Amnesty was refused to 37 prominent ANC members including the President and several Cabinet Ministers who claimed to have been collectively responsible for the ANC's campaign of violence.

Nature of Investigations

- (i) TRC material;
- (ii) Establish if there are any grounds upon which to prosecute.

Other Agencies

Researchers

26/02

SMIT MURDERS - CHARGE: MURDERReferral

High Public Interest

Nature of Case

1977 a prominent Cabinet Minister and his wife were murdered in highly suspicious circumstances. The crimes remain unsolved.

Nature of Investigations

- (i) Locate all existing material;
- (ii) Trace witnesses;
- (iii) Identify the perpetrators and determine whether there are sufficient grounds for prosecution.

27/02

NELSON SITHOLE - CHARGE: MURDERReferral

Request by deceased's family.

Nature of Case

Deceased was a prominent activist in Cape Town. He was murdered by unknown persons. The family however believe that he was murdered by known perpetrators and the killing covered up by police.

Nature of Investigations

- (i) Locate original docket and inquest record;
- (ii) Locate DPP Cape Town's file;
- (iii) Investigate material in possession of victims attorney;
- (iv) Trace alleged eye witnesses;
- (v) Determine if there are grounds to prosecute.

Other Agencies

- (i) Researchers
- (ii) SAPS
- (iii) DPP Cape Town
- (iv) Family Attorney

28/02

CASWELL CASTRO KHUMALO - CHARGE: MURDER

Referral

Request by Deceased's next of kin for remains of deceased to be traced.

Nature of Case

Deceased murdered by members of Soweto Security Branch. Perpetrators granted amnesty however remains of deceased never found.

Nature of Investigations

- (i) TRC material;
- (ii) Interview perpetrators;
- (iii) Locate original SAPS investigation;
- (iv) Attempt to trace remains

19

Other Agencies

- (i) Researchers
- (ii) Institute for Violence and Reconciliation
- (iii) SAPS

29/02**ANTOR LUBOUWSKI - CHARGE: MURDER****Referral**

High Public Interest

Nature of Case

Suspect was a high ranking member of SWAPO murdered in Namibia. Suspicion is that he was murdered by the CCB Crime remains unsolved.

Nature of Investigations

- (i) Haarms Commission
- (ii) Goldstone Commission;
- (iii) D'Oliveira Investigation;
- (iv) Evidence in possession of Namibian Government;
- (v) Outcome of State appeal in S v Basson relating to jurisdiction for conspiracy;
- (vi) Trace witnesses and TRC material;
- (vii) Determine whether there are grounds to prosecute (see (v)).

Other Agencies

- (i) Researchers
- (ii) State Archives
- (iii) Namibian authorities

30/02**RIGHT WING AMNESTY APPLICATIONS - CHARGE: TERRORISM****Referral**

Divisional Headquarters SAPS Intelligence



Nature of Case

Request by SAPS to assist in profiling of right wing involvement in current wave of terrorism.

Nature of Investigations

SAPS furnished with a complete breakdown of each and every right wing amnesty application.

Investigation complete.

Other Agencies

- (i) Researchers
- (ii) Police Intelligence

02

BOTSWANA CROSS BORDER RAID / SOWETO SECURITY BRANCH - CHARGE: MURDER

Referral

High Public Interest

Nature of Case

Soweto Security Branch involved in a series of attacks which were not fully investigated by TRC.

Nature of Investigations

- (i) TRC material;
- (ii) Original D'Oliveira Unit Investigations;
- (iii) Outcome of State appeal in S v Basson relating to conspiracy;
- (iv) Trace witnesses;
- (v) Trace evidence in possession of Botswana Government;
- (vi) Determine whether there are grounds to prosecute.

Other Agencies

- (i) Researchers
- (ii) SAPS
- (iii) Botswana Government

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32/02

TRANSKEI COUP DE AT - CHARGE: MURDER**Referral**

High Public Interest / Failure to apply for Amnesty

Nature of Case

An attempt was made to overthrow Bantu Holimisa's Transkei Government. The plot failed and it is alleged that the conspirators were murdered by the Transkei security forces.

Nature of Investigations

- (i) Existing evidence in possession of the former Transkeian authorities;
- (ii) TRC material;
- (iii) Trace witnesses;
- (iv) Determine if there are grounds to prosecute;

Other Agencies

- (i) Researchers
- (ii) DPP Eastern Cape
- (iii) SANDF

33/02

CISKEI COUP DE AT - CHARGE: MURDER**Referral**

High Public Interest

Nature of Case

Two prominent Ciskei leaders attempted to overthrow Oupa Quoza's Government and were killed in the process. Allegations have been made that they were murdered and that South Africa's Military Intelligence was involved.

Nature of Investigations

- (i) Locate formal inquest in Ciskei High Court;
 - (ii) Locate record of prosecution of Quoza in Ciskei High Court;
 - (iii) TRC material;
- 

- (iv) Trace witnesses;
- (v) Determine whether there are grounds to prosecute.

Other Agencies

- (i) Researchers
- (ii) DPP Ciskei
- (iii) SANDF

34/02

CHADWICK - CHARGE: MURDER

Referral

High Public Interest

Nature of Case

The subject was charged by the DPP Johannesburg for killing a number of persons in order to advance the cause of the IFP. He absconded to the United Kingdom before the trial commenced. Upon arrival there he claimed to be mentally ill and has been committed to an institution. Interpol has raised the issue as to whether his extradition is warranted.

Nature of Investigations

- (i) Confirm availability of original witnesses;
- (ii) Confirm current mental status of accused;
- (iii) Establish whether extradition can be effected.

Other Agencies

- (i) DPP Johannesburg
- (ii) Interpol
- (iii) SA Foreign Affairs
- (iv) British Authorities

35/02

TRAIN VIOLENCE - CHARGE: MURDER

Referral

High Public Interest



Nature of Case

It has been alleged that the high levels of train violence in the early 1990's were orchestrated by the security forces. The TRC never properly investigated the allegations.

Nature of Investigations

- (i) Trace and interview security forces members who have been suspected of orchestrating the violence;
- (ii) Determine whether there are sufficient grounds to prosecute.

36/02**REGGIE HADEBE - CHARGE: MURDER****Referral**

High Public Interest

Nature of Case

Prominent ANC leader killed in Richmond. TRC unable to find any evidence as to the perpetrators.

Nature of Investigations

- (i) Locate ITU investigations;
- (ii) TRC material;
- (iii) Identify perpetrators and determine if there are grounds to prosecute.

Other Agencies

Researchers

37/02**DULCIE SEPTEMBER - CHARGE: MURDER****Referral**

High Public Interest

Nature of Case

The subject was a high ranking ANC official killed in France. The allegation is that she was murdered by the CCB. The TRC's investigations were seized by NIA because of their sensitive nature.

Nature of Investigations

- (i) Locate TRC material in possession of NIA;
- (ii) Identify perpetrators and determine if there are grounds to prosecute;
- (iii) Locate evidence in possession of French authorities;

Other Agencies

- (i) Researchers
- (ii) NIA
- (iii) French Government

38/02**RIGHT WAY BOMBINGS - CHARGE: MURDER****Referral**

Failure to apply for Amnesty

Nature of Case

Several right wingers convicted of bombings implicated high ranking officials of the AWB in their amnesty applications. The implicated parties failed to apply for amnesty.

Nature of Investigations

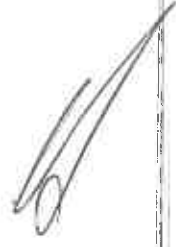
- (i) TRC material;
- (ii) Original police dockets and court records;
- (iii) Interview amnesty applicants;
- (iv) Determine whether there are grounds to prosecute perpetrators.

Other Agencies

- (i) Researchers
- (ii) DPP's
- (iii) SAPS

39/02**REVEREND GEORGE WAUSCHOPE - CHARGE: MURDER****Referral**

Minister of Justice and Constitutional Development



Nature of Case

The subject absconded from the High Court Johannesburg in 1989 when facing a charge of murder. The PAC has requested the Minister to grant the subject immunity from prosecution in order for him to return to the RSA.

Nature of Investigations

A comprehensive separate report has been compiled and the Minister advised not to accede to the PAC's request.

Other Agencies

- (i) DPP Johannesburg
- (ii) SAPS

40/02**SOUTH AFRICAN DISAPPEARANCE PROJECT - CHARGES: UNKNOWN****Nature of Case**

Request by NGO organization to trace persons who disappeared during the TRC period as a result of violence. It was agreed that they would channel all their queries to our researchers and would also make available to us information in their possession relevant to our investigations.

Other Agencies

- (i) Researchers
- (ii) NGO organization

41/02**PRO JACK - CHARGE: MURDER****Referral**

Refusal of Amnesty

Nature of Case

Murder of ANC member by other ANC members. Amnesty refused.

Nature of Investigations

- (i) TRC material;



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- (ii) Original police investigation;
- (iii) Trace witnesses;
- (iv) Determine if there are grounds upon which to prosecute.

Other Agencies

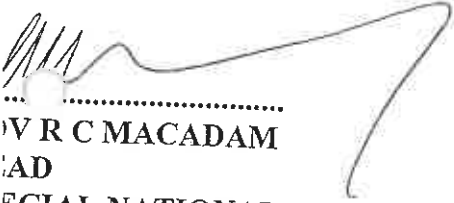
- (i) Researchers
- (ii) SAPS

GENERAL COMMENTS

1. It is anticipated that the successful investigation of the above will lead to the detection of further unsolved crimes.

Now that researchers have been appointed the TRC material is being evaluated on a systematic basis which will also lead to further investigations being registered.

Due to the small number of staff members the investigations are prioritised according to their degree of urgency however it remains the policy of my office to deal with the matters holistically once the final report of the TRC has been received and analysed.


.....
V R C MACADAM
AD
ECIAL NATIONAL PROJECTS



PROCLAMATION
BY THE
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

240 1456 "A" Z 10E (81/172486)
AD3
MINISTRY OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT CAPE TOWN
2003-03-25
KAAPSTAD MINISTERIE VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No., 2003

NATIONAL PROSECUTING AUTHORITY ACT, 1998

Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions

under section 13(1)(c) of the National Prosecuting Authority Act, 1998(Act No. 32 of 1998), I, hereby confer, impose and assign the following powers, duties and functions on or to Advocate **ANTON ROSSOUW ACKERMAN SC**, a Special Director of Public Prosecutions, appointed in terms of the said provisions:

To exercise the powers, carry out the duties and perform the functions necessary, within the Office of the National Director of Public Prosecutions as directed by the National Director and—

- (a) in particular, to head the Priority Crimes Litigation Unit and to manage and direct the investigation and prosecution of crimes contemplated in the Implementation of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), and serious national and international crimes, which include acts of terrorism and sabotage committed under the Internal Security Act, 1982(Act No. 74 of 1982), high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes to be determined by the National Director; and
- (b) generally, giving such advice or rendering such assistance to the National Director as may be required to exercise the powers, carry out the duties and perform the functions which are conferred or imposed on or assigned to him by the Constitution or any other law.

Given under my Hand and the Seal of the Republic of South Africa at.....**PRETORIA**.....on this.....**24th**.....day of.....**MARCH**.....Two Thousand and Three.

T. M. Mbeki
T. M. MBEKI
President

P. M. Maduna
P. M. MADUNA
Minister of the Cabinet

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ADV 457

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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0001

VGM Building
Hartley St.
Weavind Park
0001
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.

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(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. Nqobobo 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. Gradock 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. Mphaphela 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

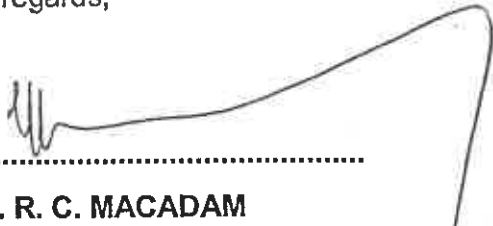
I. INVESTIGATION PUT ON HOLD PENDING THE APPEAL IN THE BASSON CASE RELATING TO JURISDICTION FOR CONSPIRACY TO COMMIT CRIMES OUTSIDE THE RSA

1. Murder of Anton Lubauwsky
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

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NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998

(English text signed by the President)

[Assented To: 24 June 1998]

[Commencement Date: 16 October 1998 – unless otherwise indicated]

[with effect from 1 August 1998 - Proc. R77 / GG 19118 / 19980731]

[with effect from 16 October 1998 - Proc. R103 / GG 19372 / 19981016]

[with effect from 6 July 2009 - Proc. R46 / GG 32380 / 20090703]

as amended by:

Judicial Matters Second Amendment Act 122 of 1998

National Prosecuting Authority Amendment Act 61 of 2000

Judicial Matters Amendment Act 42 of 2001

[with effect from 7 December 2001]

Criminal Law (Sentencing) Amendment Act 38 of 2007

[with effect from 31 December 2007]

National Prosecuting Authority Amendment Act 56 of 2008

[with effect from 20 February 2009 - Proc. R12 / GG 31930 / 20090219]

[with effect from 6 July 2009 - Proc. 45 / GG 32380 / 20090703]

Judicial Matters Amendment Act 11 of 2012

[with effect from 2 October 2012]

Judicial Matters Amendment Act 8 of 2017

[with effect from 2 August 2017]

Judicial Matters Amendment Act 12 of 2020

[with effect from 22 October 2020]

Cybercrimes Act 19 of 2020

[with effect from 1 December 2021]

Judicial Matters Amendment Act 15 of 2023 - S. 34 for Repeal of common law

[with effect from 3 April 2024]

National Prosecuting Authority Amendment Act 10 of 2024

[with effect from 19 August 2024 - Proc. 173 / GG 51083 / 20240819]

[with effect from 1 March 2026 - Proc. 7144 / GG 54174 / 20260219]

ACT

To regulate matters incidental to the establishment by the Constitution of the Republic of South Africa, 1996, of a single national prosecuting authority; and to provide for matters connected therewith.

- (b) Deputy National Directors;
- (c) Investigating Directors and Special Directors;
- (d) other members of the prosecuting authority appointed at or assigned to the Office;

[Para. (d) substituted by s. 3(a) of Act 10/2024 w.e.f. 19 August 2024]

(dA)

[Para. (dA) inserted by s. 3 of Act 61/2000 and deleted by s. 2 of Act 56/2008]

- (e) members of the administrative staff of the Office; and

[Para. (e) substituted by s. 3(b) of Act 10/2024 w.e.f. 19 August 2024]

- (f) investigators.

[Para. (f) inserted by s. 3(c) of Act 10/2024 w.e.f. 19 August 2024]

- (3) The seat of the Office of the National Director shall be determined by the President.

6. Offices of prosecuting authority at seats of High Courts

- (1) The Cabinet member responsible for the administration of justice-

- (a) must establish an Office for the prosecuting authority at the seat of each Division of the High Court provided for in terms of section 6(1); and
- (b) may, in consultation with the National Director, establish an Office for the prosecuting authority at the local seat of a Division contemplated in section 6(3)(c),

of the Superior Courts Act, 2013 (Act No. 10 of 2013).

[Subs. (1) substituted by s. 26 of Act 8/2017 w.e.f. 2 August 2017]

- (2) An Office established by this section shall consist of -

- (a) the head of the Office, who shall be either a Director or a Deputy Director, and who shall control the Office;
- (b) Deputy Directors;
- (c) prosecutors;
- (d) persons contemplated in section 38(1); and
- (e) the administrative staff of the Office.

- (3) If a Deputy Director is appointed as the head of an Office established by subsection (1), he or she shall exercise his or her functions subject to the control and directions of a Director designated in writing by the National Director.

7. Investigating Directorates

- (1)

[Subs. (1) deleted by s. 4(a) of Act 10/2024 w.e.f. 19 August 2024]

- (1A) There is hereby established, in the Office of the National Director, an Investigating Directorate to be known as the Investigating Directorate against Corruption to investigate, and carry out, any functions incidental to investigations—

- (a) relating to serious, high-profile or complex corruption, commercial or financial crime cases—
 - (i) arising from the recommendations of commissions of inquiry;
 - (ii) referred to the Investigating Director by the National Director in terms of section 28(1)(b); or
 - (iii) referred to the Investigating Director in terms of section 27, subject to section 26(2);

- (b) relating to additional related offences or categories of offences, including common law offences of—
 - (i) fraud;
 - (ii) forgery;
 - (iii) uttering;
 - (iv) theft; and
 - (v) any offence involving dishonesty;
- (c) relating to additional related statutory offences or categories of statutory offences, including contraventions of—
 - (i) the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
 - (ii) the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
 - (iii) the Protection of Constitutional Democracy against Terrorist and Related Activities, 2004 (Act No. 33 of 2004);
 - (iv) the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (v) the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);
 - (vi) the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001); and
 - (vii) any other statutory offence involving dishonesty; and
- (d) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings relating to any offence contemplated in paragraphs (a) to (c).

[Subs. (1A) inserted by s. 4(b) of Act 10/2024 w.e.f. 19 August 2024]

(1B) The President may, by proclamation in the Gazette, establish one or more additional Investigating Directorates in the Office of the National Director, in respect of matters that exclude those contemplated in subsection (1A).

[Subs. (1B) inserted by s. 4(b) of Act 10/2024 w.e.f. 19 August 2024]

(2) Any proclamation issued in terms of this section-

(a)

[Para. (a) deleted by s. 4(c) of Act 10/2024 w.e.f. 19 August 2024]

(b) shall be issued and may be amended or rescinded by the President on the recommendation of the Minister, the Cabinet member responsible for policing and the National Director; and;

[Para. (b) substituted by s. 4(d) of Act 10/2024 w.e.f. 19 August 2024]

(c) must be submitted to Parliament before publication in the *Gazette*.

(3) The head of an Investigating Directorate, shall be an Investigating Director, and shall perform the powers, duties and functions of the Investigating Directorate concerned subject to the control and directions of the National Director.

(4)

(a) The head of an Investigating Directorate shall be assisted in the exercise of his or her powers and the performance of his or her functions by-

(i) one or more Deputy Directors;

(ii) prosecutors;

(iiA) investigators;

[Subpara. (iiA) inserted by s. 4(e) of Act 10/2024 w.e.f. 19 August 2024]

(iii) officers of any Department of State seconded to the service of the Investigating Directorate in terms of the laws governing the public service;

(iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Investigating Directorate; and

(v) any other person whose services are obtained by the head of the Investigating Directorate,

and the persons referred to in subparagraphs (i) to (v) shall perform their powers, duties and functions subject to the control and direction of the head of the Investigating Directorate concerned.

(b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)-

(i) any person or body requested by the head of an Investigating Directorate in writing to do so, shall from time to time, after consultation with the head of an Investigating Directorate, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the head of that Investigating Directorate as contemplated in the said subparagraph (iv) or (v), as the case may be; and

(ii) such a person or body shall, at the request of, and after consultation with, the head of the Investigating Directorate concerned, designate a person or persons mentioned in the list concerned so to assist the head of the Investigating Directorate.

[S. 7 substituted by s. 4 of Act 61/2000 and s. 3 of Act 56/2008]

CHAPTER 3

APPOINTMENT, REMUNERATION AND CONDITIONS OF SERVICE OF MEMBERS OF THE PROSECUTING AUTHORITY

8. Prosecuting authority to be representative

The need for the prosecuting authority to reflect broadly the racial and gender composition of South Africa must be considered when members of the prosecuting authority are appointed.

9. Qualifications for appointment as National Director, Deputy National Director or Director

(1) Any person to be appointed as National Director, Deputy National Director or Director must -

(a) possess legal qualifications that would entitle him or her to practise in all courts in the Republic; and

(b) be a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned.

(2) Any person to be appointed as the National Director must be a South African citizen.

(Commencement date of s. 9: 1 August 1998)

10. Appointment of National Director

The President must, in accordance with section 179 of the Constitution, appoint the National Director.

(Commencement date of s. 10: 1 August 1998)

11. Appointment of Deputy National Directors

(1) The President may, after consultation with the Minister and the National Director, appoint not more than four persons, as Deputy National Directors of Public Prosecutions.

[Subs. (1) substituted by s. 5 of Act 61/2000]

(2)

(a) Whenever the National Director is absent or unable to perform his or her functions, the National Director may appoint any Deputy National Director as acting National Director.

(b) Whenever the office of National Director is vacant, or the National Director is for any reason unable to make the appointment contemplated in paragraph (a), the President may, after consultation with the Minister, appoint any Deputy National Director as acting National Director.

- (1) This Chapter only relates to Investigating Directorates.
- (2) Nothing in this Chapter or section 7, derogates from any power or duty which relates to the prevention, combating or investigation of any offences and which is bestowed upon the South African Police Service in terms of any law.

[Subs. (2) substituted by s. 7 of Act 56/2008]

[S. 26 substituted by s. 10 of Act 61/2000]

27. Reporting of matters to Investigating Director

If any person has reasonable grounds to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may report the matter in question to the head of an Investigating Directorate by means of an affidavit or affirmed declaration specifying-

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and
- (c) all other relevant information known to the declarant.

[S. 27 substituted by s. 11 of Act 61/2000]

28. Inquiries by Investigating Director

- (1)
 - (a) If the Investigating Director has reason to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may conduct an investigation on the matter in question, whether or not it has been reported to him or her in terms of section 27.
 - (b) If the National Director refers a matter in relation to the alleged commission or attempted commission of a specified offence to the Investigating Director, the Investigating Director shall conduct an investigation, or a preparatory investigation as referred to in subsection (13), on that matter.
 - (c) If the Investigating Director, at any time during conducting of an investigation on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the investigation so as to include any offence, whether or not it is a specified offence, which he or she suspects to be connected with the subject of the investigation.
 - (d) If the Investigating Director, at any time during the conducting of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the Investigating Directorate concerned, he or she must without delay inform the National Commissioner of the South African Police Service of the particulars of such matter.

[Subs. (1) substituted by s. 12 of Act 61/2000]

- (2)
 - (a) The Investigating Director may, if he or she decides to conduct an investigation, at any time prior to or during the conducting of the investigation designate any person referred to in section 7(4)(a) or, in the case of an investigation requested by the Head of the Directorate for Priority Crime Investigation in terms of section 17D(3) of the South African Police Service Act, 1995 (Act No. 68 of 1995), any member of the prosecuting authority or a member of that Directorate, to conduct the investigation, or any part thereof, on his or her behalf and to report to him or her.

[Para. (a) substituted by s. 8 of Act 56/2008]

- (b) A person so designated shall for the purpose of the investigation concerned have the same powers as those which the Investigating Director has in terms of this section and section 29 of this Act, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person.

[Subs. (2) substituted by s. 12 of Act 61/2000]

- (3) All proceedings contemplated in subsections (6), (8) and (9) shall take place *in camera*.

[Subs. (3) substituted by s. 12 of Act 61/2000]

- (4) The procedure to be followed in conducting an investigation shall be determined by the Investigating Director at his or her

discretion, having regard to the circumstances of each case.

[Subs. (4) substituted by s. 12 of Act 61/2000]

- (5) The proceedings contemplated in subsections (6), (8) and (9) shall be recorded in such manner as the Investigating Director may deem fit.

[Subs. (5) substituted by s. 12 of Act 61/2000]

- (6) For the purposes of an investigation-

- (a) the Investigating Director may summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the Investigating Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object;
- (b) the Investigating Director or a person designated by him or her may question that person, under oath or affirmation administered by the Investigating Director, and examine or retain for further examination or for safe custody such a book, document or other object: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the Investigating Director, at his or her request be allowed, at his or her own expense and under the supervision of the Investigating Director, to make copies thereof or to take extracts therefrom at any reasonable time.

[Subs. (6) substituted by s. 12 of Act 61/2000]

- (7) A summons referred to in subsection (6) shall -

- (a) be in the prescribed form;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Investigating Director;
- (c) be signed by the Investigating Director or a person authorized by him or her; and
- (d) be served in the prescribed manner.

- (8)

- (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a person in terms of subsection (6): Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge.
- (b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (10)(b) or (c), or in section 319(3) of the Criminal Procedure Act, 1955(Act No. 56 of 1955).

- (9) A person appearing before the Investigating Director by virtue of subsection (6) -

- (a) may be assisted at his or her examination by an advocate or an attorney;
- (b) shall be entitled to such witness fees as he or she would be entitled to if he or she were a witness for the State in criminal proceedings in a magistrate's court.

- (10) Any person who has been summoned to appear before the Investigating Director and who -

- (a) without sufficient cause fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the Investigating Director from further attendance;
- (b) at his or her appearance before the Investigating Director -
 - (i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
 - (ii) refuses to be sworn or to make an affirmation after he or she has been asked by the Investigating Director to do so;
- (c) having been sworn or having made an affirmation -

- (i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her;
- (ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true,

shall be guilty of an offence.

(11)

[Subs. (11) deleted by s. 12 of Act 61/2000]

(12)

[Subs. (12) deleted by s. 12 of Act 61/2000]

- (13) If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1)(a), the Investigating Director may hold a preparatory investigation.
- (14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory investigation referred to in subsection (13).

[Subs. (14) substituted by s. 12 of Act 61/2000]

29. Entering upon premises by Investigating Director

- (1) The Investigating Director or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an investigation at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that investigation is or is suspected to be, and may-
 - (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
 - (b) examine any object found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
 - (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
 - (d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the investigation in question, or if he or she wishes to retain it for further examination or for safe custody: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the Investigating Director, at his or her request be allowed, at his or her own expense and under the supervision of the Investigating Director, to make copies thereof or to take extracts therefrom at any reasonable time.

[Subs. (1) substituted by s. 13 of Act 61/2000]

- (2) Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including -
 - (a) a person's right to, respect for and the protection of his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (3) No evidence regarding any questions and answers contemplated in subsection (1) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answers incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (12).
- (4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE **REPUBLIEK** VAN SUID-AFRIKA

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THE PRESIDENCY

DIE PRESIDENSIE

No. 1352.

11 December 2000

No. 1352.

11 Desember 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 61 of 2000: National Prosecuting Authority Amendment Act, 2000.

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 61 van 2000: Wysigingswet Op die Nasionale Vervolgingsgesag, 2000.

GENERAL EXPLANATORY NOTE:

- [1 Words in **bold** type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line **indicate** insertions in existing enactments.

(English text signed by the President.)
(Assented to 5 December 2000.)

ACT

To amend the National Prosecuting Authority Act, 1998, so as to make provision for the establishment of the Directorate of Special Operations; to make provision for the existing Investigating Directorates to become part of the Directorate of Special Operations; to amend the Interception and Monitoring Prohibition Act, 1992, so as to make provision for applications for directions in terms of that Act by the head of the Directorate of Special Operations; and to provide for matters connected therewith.

B E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Substitution of Preamble to Act 32 of 1998

1. The following Preamble is hereby substituted for the Preamble to the National Prosecuting Authority Act, 1998 (hereinafter referred to as the principal Act): 5

“WHEREAS section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an Act of Parliament; the appointment by the President of a National Director of Public Prosecutions as head of the national prosecuting authority; the appointment of Directors of Public 10 Prosecutions and prosecutors as determined by an Act of Parliament;

AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;

AND WHEREAS the Constitution provides that national legislation must ensure 15 that the Directors of Public Prosecutions are appropriately qualified and are responsible for prosecutions in specific jurisdictions;

AND WHEREAS the Constitution provides that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or 20 prejudice;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of

“*special investigator*” means a special investigator appointed under section 19A;
 “*specified offence*” means any matter which in the opinion of the head of an Investigating Directorate falls within the range of matters as contemplated in section 7(1)(a)(aa) or any proclamation issued in terms of section 7(1)(a)(bb) 5 or (1A), and any reference to the commission of a **specified offence** has a corresponding meaning.”

Amendment of section 5 of Act 32 of 1998

3. Section 5 of the principal Act is hereby amended by the insertion after paragraph (d) of subsection (2) of the following paragraph: 10
 “(dA) *special investigators*.”

Substitution of section 7 of Act 32 of 1998

4. The following section is hereby substituted for section 7 of the principal Act:

“Investigating Directorates

7. (1) (a) There is hereby established in the *Office of the National Director* an Investigating Directorate, to be known as the Directorate of Special Operations, with the aim to— 15

(i) investigate, and to carry out any functions incidental to investigations;
 (ii) gather, keep and analyse information; and
 (iii) where appropriate, institute criminal proceedings and carry out any **necessary** functions incidental to instituting criminal proceedings, relating to— 20

(aa) offences or any criminal or unlawful activities committed in an organised fashion; or
 (bb) such other offences or categories of offences as determined by the President by proclamation in the *Gazette*. 25

(b) For the purpose of subparagraph (au), ‘organised fashion’ includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics. 30

(1A) The President may, by proclamation in the *Gazette*, establish not more than **[three]** two additional Investigating Directorates in the *Office of the National Director*, in respect of **[specific offences or specified categories of offences]** **matters not contemplated in subsection (1)(aa) or (bb)**. 35

(2) Any proclamation issued in terms of this section—

(a) shall be issued on the recommendation of the *Minister* and the *National Director*; 40

(b) may at any time be amended or rescinded by the President on the recommendation of the *Minister* and the *National Director*; and

(c) must be submitted to Parliament before publication in the *Gazette*.

(3) The head of—

(a) the *Directorate of Special Operations*, shall be a *Deputy National Director*, assigned by the *National Director*; and 45

(b) **[an]** any other Investigating Directorate, shall be an *Investigating Director*,

and shall perform the powers, duties and functions of the **[Director-ate]** *Investigating Directorate* concerned subject to the control and directions of the *National Director*.

(4) (a) [An Investigating Director] The head of an Investigating Directorate shall be assisted in the exercise of his or her powers and the performance of his or her functions by—

(i) in the case of—

(aa) the *Directorate of Special Operations*, one or more *Investigating Directors* and one or more *Deputy Directors*; and

(bb) any other *Investigating Directorate*, one or more *Deputy Directors* [, to perform, subject to the control and directions of the *Investigating Director*, any functions of the *Investigating Director*];

(ii) prosecutors;

(iiA) in the case of the *Directorate of Special Operations*, special investigators;

(iii) officers of any **Department of State** seconded to the service of the *Investigating Directorate* in terms of the laws governing the public service;

(iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the *Investigating Directorate*; and

(v) any other person whose services are obtained by the **[Investigating Director for the purposes of a particular inquiry] head of the *Investigating Directorate***,

and the persons referred to in subparagraphs (i) to (v) shall perform their powers, duties and functions subject to the control and direction of the head of the *Investigating Directorate* concerned.

(b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)—

(i) any person or body requested by the **[Investigating Director] head of an *Investigating Directorate*** in writing to do so, shall from time to time, after consultation with the **[Investigating Director] head of an *Investigating Directorate***, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the **[Investigating Director] head of that *Investigating Directorate*** as contemplated in the said subparagraph (iv) or (v), as the case may be; and

(ii) such a person or body shall, at the request of **[the *Investigating Director*]**, and after consultation with, the **[Investigating Director] head of the *Investigating Directorate* concerned**, designate a person or persons mentioned in the list concerned so to assist the **[Investigating Director] head of the *Investigating Directorate***.”.

Amendment of section 11 of Act 32 of 1998

5. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The President may, after consultation with the *Minister* and the *National Director*, appoint not more than **[three] four persons, as Deputy National Directors of Public Prosecutions.**”.

Amendment of section 13 of Act 32 of 1998

6. Section 13 of the principal Act is hereby amended—

(a) by the insertion after paragraph (a) of subsection (1) of the following paragraph:

“(aA) may appoint one or more *Directors of Public Prosecutions* to the *Directorate of Special operations*;”; and

(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) shall, in respect of **[each] any** *investigating Directorate* established in terms of section 7(1 A), appoint a *Director of Public Prosecutions* as the head of such an *Investigating Directorate*; and”.

Amendment of section 28 of Act 32 of 1998

12. Section 28 of the principal Act, is hereby amended—

(a) by the substitution for subsections (1) to (6) of the following subsections:

“(1) (a) If the *Investigating Director* has reason to suspect that a *specified offence* has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may **[hold an inquiry]** **conduct an investigation** on the matter in question, whether or not it has been **[laid before]** reported to him or her in terms of section 27. 5

(b) If the *National Director* refers a matter in relation to the alleged commission or attempted commission of a *specified offence* to the *Investigating Director*, the *Investigating Director* shall **[hold an inquiry]** **conduct an investigation**, or a preparatory investigation as referred to in subsection (13), on that matter. 10

(c) If the *investigating Director*, at any time during the **[holding of an inquiry]** conducting of an investigation on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the **[inquiry]** **investigation** so as to include any offence, whether or not it is a *specified offence*, which he or she suspects to be connected with the subject of the **[inquiry]** **investigation**. 15 20

(d) If the *Investigating Director*, at any time during the conducting of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the *Investigating Directorate* concerned, he or she must without delay inform the National Commissioner of the South African Police Service of the particulars of such matter. 25

(2) (a) The *Investigating Director* may, if he or she decides to **[hold an inquiry]** **conduct an investigation**, at any time prior to or during the [holding of the inquiry] conducting of the **investigation** designate any person referred to in section 7(4)(a) to conduct the **[inquiry]** **investigation**, or any part thereof, on his or her behalf and to report to him or her. 30

(b) A person so designated shall for the purpose of the **[inquiry]** **investigation** concerned have the same powers as those which the *Investigating Director* has in terms of this section and section 29 of *this Act*, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person. 35

(3) All proceedings **[at an inquiry]** contemplated in subsections (6), (8) and (9) shall take place *in camera*. 40

(4) The procedure to be followed in conducting an **[inquiry]** **investigation** shall be determined by the *Investigating Director* at his or her discretion, having regard to the circumstances of each case. 45

(5) The proceedings **[and evidence at an inquiry]** contemplated in subsections (6), (8) and (9) shall be recorded in such manner as the *Investigating Director* may deem fit. 50

(6) For the purposes of an **[inquiry]** **investigation**—

(a) the *Investigating Director* may summon any person who is believed to be able to furnish any information on the subject of the **[inquiry]** **investigation** or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the *Investigating Director* at a time and place specified in the summons, to be questioned or to produce that book, document or other object; 55

(b) the *Investigating Director* or a person designated by him or her may question that person, under oath or affirmation administered by the *Investigating Director*, and **examine or retain** for further examination or for safe custody such a book, document or other object; Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time; 60

- (b) by the deletion of subsections (11) and (12); and
- (c) by the substitution for subsection (14) of the following subsection:
- “(14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory **[examination] investigation** referred to in subsection (13).”.

Amendment of section 29 of Act 32 of 1998

13. Section 29 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The *Investigating Director* or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an **[inquiry] investigation** at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that **[inquiry] investigation** is or is suspected to be, and may—
- (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
- (b) examine any object found on or in the premises which has a bearing or might have a bearing on the **[inquiry] investigation** in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
- (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the **[inquiry] investigation** in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
- (d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the **[inquiry] investigation** in question, or if he or she wishes to retain it for further examination or for safe custody: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the *Investigating Director*, at his or her request be allowed, at his or her own expense and under the supervision of the *Investigating Director*, to make copies thereof or to take extracts therefrom at any reasonable time.”;
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating—
- (a) the nature of the **[inquiry] investigation** in terms of section 28;
- (b) **[the suspicion which gave rise to the inquiry] that there exists a reasonable suspicion that an offence, which might be a specified offence, has been or is being committed, or that an attempt was or had been made to commit such an offence; and**
- (c) the need, in regard to the **[inquiry] investigation**, for a search and seizure in terms of this section, that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.”; and
- (c) by the substitution for subsection (11) of the following subsection:
- “(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned, contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the **[inquiry] investigation** and that such information is necessary for the **[inquiry] investigation**, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.”.

308 259 1

Seek, Find, Strike



**PRESENTATION TO THE PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT:
IMPLEMENTATION OF THE RECOMMENDATIONS OF THE TRUTH AND RECONCILIATION COMMISSION (TRC)
20 May 2025**

Presentation by: Lieutenant General (Dr/Advocate) SG Lebeya (SOEG):
National Head of the Directorate for Priority Crime Investigation

CASES PENDING DECISION BY NPA

330

Case number	Ga-Rankuwa Cr 238/07/1991 HO Cats Enq 11/12/2020	<u>SYNOPSIS OF CASE</u> Sergeant Ngqulunga was one of the Security Branch members who was based in Vlakplaas. It was alleged in their daily duties that he became mentally unstable. The instability led to him indulging in alcohol and subsequently shot his pregnant wife three times. It is alleged that he approached Colonel De Kock asking for a transfer to a different environment and a decision was made to kill him as his superiors feared that he may compromise their Vlakplaas operations. On the day of his murder, he was taken to Kgabalatsane in North West where an AK47 was used to kill him so that it appeared to be ANC operations. <u>CURRENT STATUS:</u> A decision to re-open the inquest was recommended. The memorandum will be submitted to the Minister of Justice and Constitutional Development for approval.
Offence	Kidnapping and Murder	
Date Reported	14 June 2021	
Date referred to DPCI	14 June 2021	
Victim	Brian Ngqulunga	
Suspects/Accused	6	
Number of charge	2	
Number of statements obtained	28	

Inquest: Mr Mthunsi Vlemeseni Njikazi (Kwz-Zulu Natal)	The accused in this matter was indicted on 7 November 2023. There were challenges when SAPS refused to pay for the legal expenses of the accused. He died on 29 December 2023. Inquest proceedings commenced and on 27 November 2024, the proceedings were finalised.
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I OTHER-DECISIONS/PENDING INQUESTS

1	Mr Wellington Mbili
2	Mr Sithembiso Nzuza and Mr Moses Ramotlo
3	Mr Vusumuzi Meshack Msani
4	Mr Vusumuzi Mbatha
5	Mr Sifiso Tutu Shezi
6	Messrs Lolo Sono and Shabalala
7	Ms Susan Maripe
8	Sgt Richard and Irene Motasi
9	Mr Brian Nqulunga
11	Mr Charles Ndaba and Mbuso Shabalala
12	Mr Bhekani Sibusiso Mbokazi
13	Mr Zama Sokhulu
14	Mr J van der Merwe
15	Dr Muofhe
16	Mr Ernest Mamashila

J ASSESSMENT BY ADVOCATE NTSEBEZA, SC OF THE MEASURES, CHECKS AND BALANCES ADOPTED BY THE NPA TO DEAL WITH TRC MATTERS

41. As a direct result of the Full Bench judgment of **Rodrigues v National Director of Public Prosecutions of South African and others** (76755/2019)[2019]ZAGPJHC 159; [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251(GJ), the NPA took a decision during

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 Pikoli'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

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

AFFIDAVIT OF
MASHAU SILAS RAMAITE SC

I, the undersigned,

MASHAU SILAS RAMAITE SC;

Do hereby state under oath as follows:

INTRODUCTION

- 1 I am an adult male practising advocate and Senior Counsel. I was admitted as an Advocate in 1988 and granted the status of Senior Counsel in 2001.
- 2 I formerly served as Director of Public Prosecutions (DPP), North Gauteng, Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions, Deputy National Director of Public Prosecutions (DNDPP) and Acting National Director of Public Prosecutions ("ANDPP") in the National Prosecuting Authority ("NPA"). I



took early retirement from the National Prosecuting Authority in August 2019.

- 3 Save where expressly stated otherwise or appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
- 4 I depose to this affidavit at the request of the Commission's Evidence Leaders and in order to ensure that all the relevant facts are placed before the Commission.

QUALIFICATIONS AND PROFESSIONAL EXPERIENCE

- 5 I obtained a *Baccalaureus Procuratoris* (B.Proc) in 1985 from the University of Fort Hare. I subsequently also obtained a Bachelor of Laws (LLB) in 1987, a Master of Laws (LL.M) in 1989 and a Doctor of Laws (LLD) in 1996, all from the University of South Africa (UNISA). I am also a Licensed International Financial Analyst.
- 6 I have worked as an Interpreter, Clerk of the Court, Prosecutor, Magistrate, Candidate Attorney, State Advocate, Senior State Advocate and Deputy Attorney-General. I have also worked as a University Part-time Lecturer, lecturing Constitutional Law, Administrative Law and Law of Delict.
- 7 I was appointed Acting Attorney-General responsible for the then Venda High Court in 1995, after the first democratic elections. In 1996 I was



appointed as a Deputy Attorney General and transferred to Pretoria, serving under Dr Jan D' Oliveira who was Attorney-General of the then Transvaal.

- 8 When the National Prosecuting Authority Act, 32 of 1998 came into operation in August 1998 and the National Prosecuting Authority ("NPA" was established, Bulelani Ngcuka was appointed as the inaugural National Director of Public Prosecutions ("NDPP") and I was appointed Director of Public Prosecutions ("DPP") responsible for all courts falling within the area of jurisdiction of the Pretoria High Court, which at that time covered the Vaal, North Gauteng, Limpopo and Mpumalanga. I was appointed as such by President N R Mandela on the recommendation of Mr Ngcuka as National Director of Public Prosecutions and Mr Dullah Omar as Minister of Justice. I served in that capacity from 1998 until 2001.
- 9 Before my appointment as DPP, Dr Jan D'Oliveira was the Attorney-General of the Transvaal, head-quartered in Pretoria. When I was appointed as DPP Dr Jan D'Oliveira was appointed as a Deputy National Director of Public Prosecutions ("DNPP") and moved to the Head Office of the NPA.
- 10 Upon my appointment as DPP, Pretoria I inherited all the cases and dockets which were being supervised by Dr Jan D' Oliveira as Attorney-General. Among these cases and dockets were cases and dockets that featured in the Goldstone Commission of Inquiry Regarding the



Prevention of Public Violence and Intimidation. I shall refer to these cases a little bit more later in this affidavit.

- 11 In 2001 Mr Ngcuka, the then NDPP moved me to Head Office as a Special Director of Public Prosecutions in his office. I served in this capacity from 2001 to 2003. In that capacity I served as his special advisor together with Adv. Lungisa Dyosi and was part of a team that identified the need for the establishment of specialized units to deal with cases which required a more specialized and dedicated focus. It was during this time that the Priority Crimes Litigation Unit ("PCLU") was established, together with the Specialized Commercial Crimes Unit ("SCCU") and the Sexual Offences Unit. ("SOCA"). The Witness Protection Unit ("WPU"), which was at that time operating from the Department of Justice, was moved to the Head Office of the NPA.
- 12 In 2003 I was appointed as DNDPP in charge of the National Special Services Division ("NSSD"), responsible for the PCLU, SCCU, SOCA and WPU. Adv. Leornard McCarthy was also appointed as a Deputy National Director of Public Prosecutions, responsible for the Directorate of Special Operations ("DSO").
- 13 I first became aware of dockets and cases relating to cases involving conflicts of the past during my tenure as DPP for Northern Gauteng. I subsequently became involved in dealing with these cases in my capacity as SDPP in the Office of the NDPP. A significant number of these cases featured in the Truth and Reconciliation Commission ("TRC") in that



some of the implicated persons had applied for amnesty during the active period of the TRC. Some of the implicated persons were mentioned in the dockets and cases which featured in the Goldstone Commission.

TRC CASES - BACKGROUND

- 14 As already mentioned, when I was appointed DPP, North Gauteng, I inherited cases and dockets which arose from the Goldstone Commission. These were cases which were being handled and supervised by Dr Jan D'Oliveira who, in addition to his position as Attorney-General for the Transvaal, was also the Chief Evidence Leader for the Goldstone Commission.
- 15 There were two categories of cases which arose from the Goldstone Commission of Enquiry which I inherited. Each category was assigned to a Deputy Attorney-General in the Office of the Attorney-General, Transvaal. The first category consisted of cases involving the Boeremag and right wing individuals; these were assigned to Adv. Paul Fick, SC. The second category consisted of cases involving the security forces, mainly State Security, the Police and the Defence; these were assigned Adv. Anton Ackermann, SC.
- 16 For the most part of my time as DPP, North Gauteng Adv. Ackermann was busy with the Wouter Basson trial, which resulted in not much attention to the bulk of the cases arising from the Goldstone Commission. There was also only one police investigator who part of the investigating team of the



Goldstone who assigned to deal with these case. The police investigator was subsequently withdrawn by the National Commissioner of Police and ordered to return all dockets in his possession or under his control to the Office of the DPP.

- 17 Soon after the dockets were returned to the Office of the DPP, I approached the NDPP, Mr Ngquka, and raised my concern about lack of investigative capacity to deal with these cases. In 1999 the NDPP issued a directive that all TRC-related cases must be transferred to the Office of the NDPP.
- 18 Subsequent to the issuing of the directive, all TRC-related cases were transferred to the Office of the NDPP. The NDPP established the Human Rights Investigative Unit ("HRIU"), which headed by Vincent Saldhana and functioned as a working group tasked with revieweing, investigating and prosecuting cases in which implicated persons had been denied amnesty or had not applied for amnesty. No prosecutions were instituted during this period.
- 19 The HRIU operated until 2000. In 2000 cases and dockets which were with the HRIU were transferred to the Directorate of Special Operations ("DSO"). A sub-unit, known as the Special National Projects Unit ("SNPU") and headed by Adv. Chris Macadam was established and operated until 2003. No prosecutions were instituted during this period.



20 As already stated, I was appointed as SDPP in the Office of the NDPP and served as a Special Advisor to the NDPP, together with Mr Lungisa Dyosi. In one of our discussions with the NDPP about formulating and developing a strategy for addressing and combatting some of the criminal phenomena which the NPA had to deal with, it was decided to establish specialized units within the Office of the NDPP, with specific focus on priority crimes, commercial crime and sexual offences. It was a result of this that the PCLU, the SCCU and SOCA were established by proclamation. These units resorted under the National Special Services Division, which I was appointed to head as a Deputy National Director of Public Prosecutions.

21 I recommended to the NDPP that Adv. Anton Ackermann, SC be appointed as SDPP in charge of the PCLU. I did so because when I was DPP, North Gauteng Adv. Ackermann, SC was a Deputy DPP who reported to me and had dealt with cases involving conflicts of the past. He had successfully prosecuted Dr Wouter Basson and I regarded him as a fearless and formidable litigator.

22 Adv. Anton Ackermann, SC was appointed by Presidential Proclamation as an SDPP and head of the PCLU on 24 March 2003. The mandate of the PCLU, as stated in the Proclamation, was to manage and direct investigations and prosecutions in relation to various priority crimes, including serious national crimes such as terrorism, sabotage, high treason, sedition, international crimes under the Rome Statute, foreign military assistance and other priority crimes as determined by the NDPP.



- 23 In May 2003 the NDPP, Mr Bulelani Ngcuka, made a determination that all TRC-related cases in which amnesty has been denied or where no application for amnesty was made were 'priority crimes' in terms of the Proclamation. Some 400 or so investigation dockets were transferred to the PCLU. Adv. Ackermann, SC and Chris Macadam, who was assigned as a Deputy DPP in the PCLU, conducted an initial audit of TRC-related cases and identified some 21 cases which required further investigation.
- 24 Although I was not involved in the day to day operational activities of the PCLU, Adv. Ackermann, SC kept me abreast of the work of the unit by way of monthly reports. These reports were tabled and discussed at the monthly meetings of the Executive Committee ("EXCO") of the NPA, which was chaired by the NDPP and made up of all the DPP's and SDPP's.
- 25 In July 2004 Mr Ngcuka resigned from his position as NDPP. I was appointed as Acting NDPP and served in that capacity until 30 January 2005, after which Adv. Vusi Pikoli was appointed as NDPP.
- 26 During 2003, 2004 and 2005 the PCLU identified a number of TRC-related cases for further investigation and possible prosecution. It instituted prosecutions against Eugene Terre' Blanche, Buyile Roni Blani and Gideon Niewoudt, Johannes Martin van Zyl and Johannes Koole.
- 27 At the instance of the PCLU and in 2004, Gideon Niewoudt, Johannes Martin van Zyl and Johannes Koole were each charged with abduction,



assault and murder of three anti-apartheid activists, known as the PEBCO

3. The accused persons had been denied amnesty in 1999, They subsequently launched an application for a review of the decisions to refuse them amnesty. Niewoudt died in 2005 and, sadly, the review was delayed by some five years and was only finalised in 2009 when the High Court ruled that an Amnesty Committee be convened to hear the application of van Zyl.

28 The case against van Zyl and Koole was provisionally withdrawn in 2009 pending finalisation of the rehearing of the amnesty application. To my knowledge, the Amnesty Committee was never reconvened and the case against van Zyl and Koole was never reinstated.

29 In November 2004, the PCLU decided that three former security police officers, Major-General Christoffel Smith, Colonel Gert Otto and Johannes van Staden should be arrested and charged for the attempted murder by poisoning of Rev. Frank Chikane in 1989. I was briefed by Adv. Ackermann about the pending arrest and charges. I endorsed the decision to arrest and charge the individuals and personal took the decision and gave authorisation that criminal proceedings must be instituted and that the prosecution must proceed.

30 On or about 11 November 2004 Adv. Ackermann, SC reported to me that he had received a call from a Mr Wagenaar, an attorney representing Smith, Otto and van Staden, advising him not to proceed with the arrest and charging of his client. He informed me further that Wagenaar had told



him that he must expect a telephone call from the Ministry of Justice and that he would be advised that the case against Smith, Otto and van Staden must be placed on hold.

31 Adv. Ackermann also informed me that soon after he had spoken with Wagenaar he received a telephone call from an official in the Ministry of Justice and informed that a decision had been taken that the case involving Rev. Chikane should be put on hold pending the development of guidelines to deal with the TRC cases. I told Adv. Ackermann that I have no knowledge of the development of any such guidelines. As far as I was concerned, prosecution policy and guidelines already existed; the existing guidelines were developed in line with the United Nations Guidelines on the Role of Prosecutors and applied and continued to apply in all cases involving the decision whether or not to prosecute and whether or not to continue or discontinue a prosecution.

32 I advised Adv. Ackermann, SC that it would be better to wait and have a better understanding of what exactly was happening. Shortly after I have spoken with Adv. Ackermann, SC, I received a telephone call from the Minister of Justice, Mrs Brigitte Mabandla. She told me that there is a Task Team which was appointed by the Directors-General Forum to develop a mechanism to deal with TRC cases. I expressed to the Minister my concern that any process or mechanism which involves the Executive or the Justice and Security cluster would amount to encroaching in prosecutorial decision-making and would be a violation of prosecutorial independence as enshrined in Section 179. The Minister nevertheless

insisted that the prosecution of all TRC-related cases must be put on hold until the development and adoption of guidelines.

- 33 Subsequent to my telephone call with the Minister of Justice I called Adv. Ackermann and told him that I received an instruction from the Minister that the investigation and prosecution of all TRC-related cases must be put on hold pending the development and adoption of guidelines. I told Adv. Ackermann, SC that my understanding was that an effective moratorium has been placed by Government on all TRC cases and that until it was lifted we have no choice but to wait.
- 34 After the call from the Minister of Justice and my discussion with Adv. Ackermann, all TRC cases which were being handled by the PCLU were accordingly placed on hold pending the development and formulation of guidelines. My understanding was that the guidelines were in relation to cases arising from conflicts of the past. As I understood, they were to be incorporated as amendments to the existing Prosecution Policy.
- 35 As I have already stated, I raised my concern with the Minister regarding lawfulness and constitutionality of the guidelines. Even though I was not privy to the rationale, content and context of the proposed guidelines, I held the opinion that there was nothing wrong with the existing prosecution policy and that any guidelines or policy which sought to a specific class of cases would be irrational.



- 36 In my view, which I openly expressed at various EXCO meetings, the existing prosecution policy and policy directives were sufficient and no further guidelines were required.
- 37 The existing prosecution policy and policy directives were determined by the NDPP with the concurrence of the Minister of Justice and after consulting with the DPP's, as provided in section 179(5)(a) and (b) of the Constitution and section 22(1) of the National Prosecuting Act, 32 Of 1998. They were first issued in 1999 and became effective on 01 November 1999.
- 38 The existing prosecution policy and policy directives already provided a rational framework for prosecutors to perform their duties with independence and impartiality and to make consistent, fair and transparent decisions on whether to institute criminal proceedings. The primary criterion is whether there is sufficient admissible evidence to provide a reasonable prospect of a successful prosecution.
- 39 I served as Acting NDPP for six months, from July 2004 to January 2005. On 01 February 2005 Adv. Vusi Pikoli was appointed as NDPP. I continued serving in my capacity as DNDPP, still responsible for the PCLU and reporting to the NDPP.
- 40 In October 2006 the NDPP, Adv. Vusi Pikoli assigned me to chair a Task Team that was set up, as I understood at that time, to review TRC-related cases and to agree on providing investigative capacity. The task team met



for the first time on 12 October 2006 and consisted of senior officers from SAPS, NIA and the Department of Justice and Constitutional Development.

- 41 At the second meeting, which was held on 25 October 2006, Adv. Ackermann, SC presented an audit report on all TRC-related cases which were being handled by the PCLU. The need for investigative capacity to attend to these cases was discussed. The SAPS representative, Mr Lekalakala, made a commitment that he will discuss the need for investigative capacity with the National Commissioner of Police, Mr Jackie Selebi, and will report back at the next meeting.
- 42 The next meeting was held on 06 November 2006. The Chikane matter was discussed for the first time at this meeting. Mr Lekalakala informed the meeting that the National Commissioner of Police believed that Rev. Chikane was not interested in a prosecution. Adv. Ackermann informed the meeting that Rev. Chikane had left the matter in the hands of the prosecution. The meeting ended without any resolution and with no commitment regarding the provision of investigative capacity. I reported the development and outcome of the meeting to Adv. Pikoli.
- 43 A further meeting was held in early December 2006 to try and resolve the impasse. At this meeting Police Deputy Commissioner Jacobs informed the meeting that the National Commissioner was not prepared to provide any investigative capacity in the Chikane matter because Rev. Chikane



had not been consulted and did not wish to become involved in any prosecution. I once again reported this to the NDPP.

- 44 Most strikingly, at the meeting which took place in early December 2006, Commissioner Jacobs informed the meeting that the National Commissioner of Police had told him to make it clear the function of the Task Team was to make a final recommendation to a "Committee of Directors-General" which would in turn make a recommendation to the NDPP on whether or not to prosecute and who to prosecute and who not to prosecute. This was, in my view, inconsistent with prosecutorial independence.
- 45 In Septemeber 2007 Adv. Pikoli was suspended as NDPP. Adv. Mokotedi Mphse, SC was appointed as Acting NDPP. Soon after the appointment of Adv. Mpshe, SC as Acting NDPP, Adv. Ackermann informed me that he has been relieved of his duties in relation to the TRC cases.
- 46 I have read the affidavits of Lukhanyo Calata, Anton Ackermann and Vusumzi Pikoli which were supplied to the Commission by Webber Wentzel Attorneys.

CONFIRMATION OF AFFIDAVITS

- 47 I confirm the contents of the founding affidavit of Lukhanyo Calata dated 17 January 2025 in the matter of *Calata and Others v Government of South Africa and Others* (Gauteng Division, Case No 2025-005245) insofar as it relates to me.



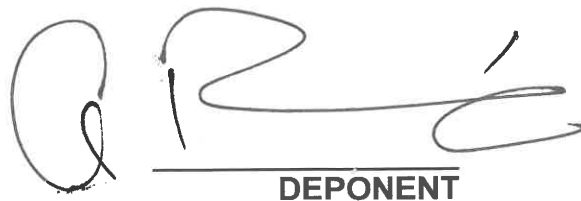
- 48 I confirm the contents of the affidavit of Anton Rossouw Ackermann dated 07 May 2015 in the matter of *Nkadimeng v National Director of Public Prosecutions and Others* (Gauteng Division of the High Court, Pretoria, Case No. 36554/2015) insofar as it relates to me.
- 49 I also confirm the contents of the affidavit of Vusumzi Patrick Pikoli dated 06 May 2015 filed in the matter of *Nkadimeng v National Director of Public Prosecutions and Others* (Gauteng Division of the High Court, Pretoria, Case No. 36554/205) insofar as it relates to me.

CONCLUSION

- 50 I regard the imposition of a moratorium by the executive or a member of the executive on the prosecution of TRC cases purely on the basis of developing and adopting guidelines to deal specifically with these cases as a form of political interference.
- 51 The development and formulation of prosecution guidelines by a Committee consisting of Directors-General of the security cluster is inconsistent with section 179(5)(a) and (b) of the Constitution and section 22(1) of the National Prosecuting Authority Act, 1998 and unlawful.
- 52 I also regard the attempt to involve a body consisting of Directors-General to make recommendations on who to prosecute and who not to prosecute as an encroachment into prosecutorial independence.



53 There is no doubt in my mind that the effective investigation and prosecution of TRC cases were severely hampered by political interference.



DEPONENT

SIGNED AND SWORN TO BEFORE ME AT PRETORIA ON THIS 26th DAY OF NOVEMBER 2025, THE DEPONENT HAVING ACKNOWLEDGED IN MY PRESENCE THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THE PROVISIONS OF GOVERNMENT GAZETTE R1478 OF 11 JULY 1980 AS AMENDED BY GOVERNMENT GAZETTE R774 OF 20 APRIL 1982, CONCERNING THE TAKING OF THE OATH, HAVING BEEN COMPLIED WITH.

 CST
DS9839-3
K RASEKLALA

COMMISSIONER OF OATHS

Full names: RASEKLALA KAMOLELO

Business address: 491 Pretoria Rd Silverton

Designation: Constable

Capacity: POLICE OFFICER





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

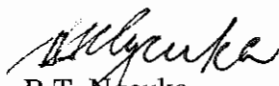
**National Director of Public Prosecutions
VGM Building
National Prosecuting Authority
21 October 2003**

The Head:

Priority Crimes Litigation Unit

**RE: PROSECUTIONS EMANATING FROM THE TRUTH AND
RECONCILIATION COMMISSION**

In terms of the powers given to me under the Presidential Proclamation of 24 March 2003 I hereby direct that your unit assumes responsibility for the investigation and prosecution of all cases emanating from the Truth and Reconciliation Commission.


B.T. Ngcuka

National Director of Public Prosecutions

**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 Yanela Ntloko- NPA representative
Adv KD Moroka (SC) – DoJ representative
Adv Tlotlego Tsagae (DoJ representative)
Adv Motlalepule Rantho (for SAPS)
Adv Bridgette Nthambeleni (for Adv Jiba)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms A Thakor – The Calata Group
Adv Gerrie Nel SC (for AfriForum)

22 APRIL 2026

DAY 35

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PROCEEDINGS ON 22 APRIL 2026

CHAIRPERSON: Good morning.

ADV SEMENYA: Good morning, Chair and Commissioners. Today we have Adv Ledwaba who is going to be giving his evidence and my learned colleague, Nalane, will be dealing with that aspect of his evidence.

CHAIRPERSON: Thank you.

ADV NALANE: It is Mr Ledwaba, not advocate, just small correction, but that would become apparent later.

10 CHAIRPERSON: It is Mr Ledwaba?

ADV NALANE: Mr Ledwaba.

CHAIRPERSON: Yes. Mr Ledwaba, are you going to give your evidence under oath or affirmation?

MR LEDWABA: Under 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'.

MR LEDWABA: So help me God.

MALALA GEOPHREY LEDWABA: duly sworn states

20 CHAIRPERSON: Thank you.

EXAMINATION BY ADV NALANE: Mr Ledwaba, you have a bundle before you which has a statement or affidavit that you deposed to. Do you have that?

MR LEDWABA: I confirm.

ADV NALANE: The affidavit appears on page 1696 paginated.

Confirm that?

MR LEDWABA: I confirm that.

ADV NALANE: If you turn to page 1722, there is a signature that appears there.

MR LEDWABA: I see it, Chairperson.

ADV NALANE: Whose is that?

MR LEDWABA: It is mine.

ADV NALANE: Do you therefore confirm the contents of this affidavit?

10 MR LEDWABA: I do.

ADV NALANE: And you stand by the contents?

MR LEDWABA: I do. Correct.

ADV NALANE: Before we start with the contents of the affidavit statement, do you have any corrections to make in the statement?

MR LEDWABA: Correct, Chairperson. We have few corrections.

ADV NALANE: Yes, at paragraph 1.

MR LEDWABA: In paragraph 1 the word "Gamashashne" is missing one alphabet. It is A after the H to read Gamashashane.

ADV NALANE: So it should read G-a-m-a-s-h-a-s-h-a-n-e.

20 MR LEDWABA: Correct.

ADV NALANE: And then if you turn to paragraph 6.

MR LEDWABA: From 5.2.

ADV NALANE: 5.2, any correction there?

MR LEDWABA: In the second sentence under 5.2 it is typed "Directorate of Special Investigation". That "investigation" is

incorrect. It should be replaced with the word "operations",
Directorate of Special Operations.

ADV NALANE: DSO.

MR LEDWABA: DSO.

ADV NALANE: The next correction?

MR LEDWABA: The next correction is in paragraph 6, first sentence. The degree of B.luris says "University of the North". "The North" is incorrect. It should be "South Africa, Unisa".

ADV NALANE: So it should read "University of South Africa".

10 MR LEDWABA: Indeed, correct.

ADV NALANE: Next correction that you want to make?

MR LEDWABA: In paragraph 7.

ADV NALANE: Paragraph 7.

MR LEDWABA: Fourth sentence or fourth line: "involved in the administration of estates". We are adding the word "deceased estates".

ADV NALANE: Deceased estates.

MR LEDWABA: Correct.

ADV NALANE: Thank you; the next on page 1709.

20 MR LEDWABA: 17?

ADV NALANE: Paragraph 49.

MR LEDWABA: 09?

ADV NALANE: Yes, paragraph 49.

MR LEDWABA: We missed paragraph 39.

ADV NALANE: Okay, 39.

MR LEDWABA: Yes.

ADV NALANE: Okay, let us go there.

MR LEDWABA: Paragraph 39 starts with the words “special” which is incorrect. It should read “specified”.

ADV NALANE: Thank you; the next one?

MR LEDWABA: Paragraph 49 indeed.

ADV NALANE: How do you want to correct that?

MR LEDWABA: The second last sentence: “Therefore, TRC cases, only two matters”. The word “McCarthy” there should be replaced by
10 “Ngcuka”, “Adv Ngcuka”.

ADV NALANE: Thank you. Yes, the next one?

MR LEDWABA: Paragraph 56.

ADV NALANE: 56.

MR LEDWABA: Last sentence: “transferring the two researchers”. We are adding the word “two TRC researchers”.

ADV NALANE: Thank you.

MR LEDWABA: Paragraph 66.

ADV NALANE: Yes.

MR LEDWABA: First word “the” should be replaced with the word
20 “their”.

ADV NALANE: Thank you. Next?

MR LEDWABA: Paragraph 89, fourth sentence, end of that fourth sentence, it reads currently: “DSO authorised projects in the PCLU”. The word “PCLU” should be substituted with “SNPU”.

ADV NALANE: SNPU.

MR LEDWABA: Correct.

COMMISSIONER GABRIEL: Sorry, Mr Nalane, I missed that paragraph.

MR LEDWABA: Paragraph 89.

COMMISSIONER GABRIEL: 89. Thank you.

MR LEDWABA: The fourth line starting with “complex DSO authorised projects in the PCLU”. That word “PCLU” is substituted with “SNPU”.

COMMISSIONER GABRIEL: Thank you.

10 MR LEDWABA: Thank you, Commissioner. I think that is it.

ADV NALANE: That is it. Thank you. It is common cause that you have been served with a Rule 33 notice. Correct?

MR LEDWABA: Correct.

ADV NALANE: And you have been asked to come and help this commission by giving information within your knowledge which can help the commission to look at the terms of reference.

MR LEDWABA: Correct.

ADV NALANE: You are aware of the terms of reference?

MR LEDWABA: I am aware.

20 ADV NALANE: In summary, the commission is asked to investigate and establish whether there were any attempts to interfere with or stop the investigation or prosecution of TRC cases by the South African Police Service or the National Prosecuting Authority.

MR LEDWABA: I confirm that.

ADV NALANE: Now, we want to deal firstly with you, your identity,

your person, your experience and background. That would be at paragraph 6 of your affidavit, page 1698. Are you there?

MR LEDWABA: I confirm that.

ADV NALANE: But before then in paragraph 5, you just provide a structure of your affidavit, what topics you want to cover, which would be apparent as [indistinct].

MR LEDWABA: I confirm that.

ADV NALANE: Yes, let us start with your educational and professional background; and this is covered from page 6, paragraph 10 6 to 19, if you can just summarise your background. If you need to read any portion of your affidavit, please feel free to do that.

MR LEDWABA: I think it will be easier if I just read it.

ADV NALANE: Go ahead.

MR LEDWABA: Thank you.

ADV NALANE: Yes, and if you want to explain or expand further, you can do that.

MR LEDWABA: Thank you very much. Paragraph 6 says:

20 "I hold a B.Iuris degree from the University of Unisa which I obtained in 1989 and an LLB degree from the University of the North obtained in 1992. I also hold an LLB degree in Law of Contract from the University of Pretoria obtained in 1997 and a Masters in Business Leadership degree obtained in 2003 from the University of South Africa."

ADV NALANE: And in paragraph 7 you deal with your work history, beginning with your time in the Department of Justice as a clerk, Department of Justice of the then Homeland of Lebowa. Correct?

MR LEDWABA: Correct, yes.

ADV NALANE: Go ahead and deal with that.

MR LEDWABA: I can summarise to say I joined the department in 85, 1985 as an administration clerk and the Department of Justice then was an all-inclusive department running finance, home affairs, almost all the departments, were all-inclusive in the department, 10 which allowed me to be involved in a number of divisions at that office: administration of deceased estates, maintenance, claims, registration and licensing of cars, learner's and driver's licence, payment of the Lebowa Government tax, registration of birth and death certificate, issuing of passports, IDs and travelling documents and even including administration of the UIF, Unemployment Insurance Fund.

From 87 I was then, became a clerk of the court and court interpreter and I also had a year stint as a sheriff of the court which was then called 'messenger of the court'. After graduating with the 20 first degree B.Luris, I was appointed as a prosecutor at the Lebowakgomo Magistrate Court, later transferred to Magistrate Mankweng in 1991. The main aim was to complete my LLB degree at the University of the North, which I then did and completed in 1992 and remained stationed at the Mankweng Magistrate Court.

1993 I was transferred and promoted to regional court

prosecutor in Polokwane Regional Court, then Pietersburg. And it reads in paragraph 11 that I was the first black prosecutor in the regional court then. I remained there until December 1994. I was admitted as an Advocate of the High Court in October 1994, Pretoria, 1994.

In 1995 I was appointed as a junior state advocate within the then Attorney-General's office in Pretoria, which is now called Director of Public Prosecution. In 1997 I was promoted to a next rank, being senior state advocate at the same office and in 2000
10 promoted again to be a Deputy Director of Public Prosecution still in Pretoria reporting to the then Attorney-General Dr D'Oliveira.

ADV NALANE: So with 14, it is common cause that the Attorney-General's office was converted when the National Prosecuting Authority was past 1998,

MR LEDWABA: Correct. Prior to 98 there were, I can call them provincial attorney-generals. I think there were five then. And after the promulgation of Act 32 of 1998, that rank or position was abolished and replaced by Director of Public Prosecution which were then headed by National Director of Public Prosecution, who was
20 then Mr Bulelani Ngcuka.

ADV NALANE: Line 15.

MR LEDWABA:

"In 2001, I was then transferred to the Directorate of Special Operations, which is colloquially known as the DSO and/or 'the Scorpions'. I retained my

position and rank as a Deputy Director of Public Prosecution and I joined Adv Sonn and Adv McCarthy at the DSO. The two as the Head of the DSO were reporting to Mr Ngcuka as the NDPP.”

On my arrival, paragraph 16, I was assigned to lead the Head of the Organised Crime Desk, a position I occupied until February 2003, because on 1 March 2003 I was appointed as an investigative director, which was referred also as the Head of Operation and also
10 Deputy Head of the DSO, second in charge. Adv McCarthy was then promoted to be the Head of the DSO after Adv Sonn left the DSO. I occupied this position until my resignation in December 2004.

ADV NALANE: Then 17 you deal with your progression in your career.

MR LEDWABA: In 2005, after leaving the NPA shortly, I began serving my pupillage at the Johannesburg Society of Advocates, JSA. And towards the end of January 2005, Adv Pikoli invited me to withdraw my resignation that I just submitted; and I agreed.

ADV NALANE: What was Adv Pikoli’s position at the time?

20 MR LEDWABA: He replaced after Mr Ngcuka resigned in 2004. I think Adv Ramaite acted for some while and Mr Pikoli was formally appointed by the president as the national director in end of January 2005.

After he asked me, I agreed and I rejoined the DSO in February 2005, occupying the same position as the investigating

director in the DSO, a position I occupied until I finally resigned on 30 June 2005, after which period I rejoined the JSA and continued with my pupillage programme. I did my pupillage at the Duma Nokwe Group; and after completion, I was to join them. However, I need to add here; it is not contained in the statement, Chairperson and Commissioners.

Immediately on passing the examination, I was arrested on 13 October 2006 from allegation arising from my then position in the DSO. The trial started in 2008 and only completed in 2018. There
10 were a number of charges. Some were withdrawn. Some I was acquitted in terms of 174 and I was convicted on six counts. Prior to, I was convicted on 5 February 2014. And paragraph 19 I highlight that I was struck off the roll of advocates in October 2014 because of that conviction, but prior to my sentence. I was only sentenced in July 2015.

And in 19 we add that I was subsequently acquitted of all the charges by the High Court on an appeal where the two judges even making serious adverse criticism against prosecutors who handled my trial and expressly finding that the facts never established a
20 commission of any offence.

ADV NALANE: And currently, what are you doing?

MR LEDWABA: I am currently self-employed. Chairperson, I see we had typed and we forgot to amend it when we did the correction.

ADV NALANE: So 20 must read: "I am currently self-employed".

MR LEDWABA: Self-employed, correct.

ADV NALANE: The next topic we deal with is the structure of the National Prosecuting Authority and the Directorate of Special Operations from paragraph 21 onwards. Before we delve into the detail, do you want to explain why you want to deal with the structure of the NPA at the time when [indistinct]? Why is it important?

MR LEDWABA: I think as to assist the commission to have a fair and a proper understanding of how the DSO firstly on their mandate and how they operated in relation to the other unit of the NPA as well as the South African Police Service and in particular the topic at
10 hand, how the TRC were handled then or ultimately left the DSO.

ADV NALANE: So in 21 you then deal with the Directorate of Special Operations, the DSO.

MR LEDWABA: Correct.

ADV NALANE: Read that and explain it.

MR LEDWABA: It reads:

20 “The DSO, commonly known as the Scorpions, was a specialised unit within the NPA formed by the South African Parliament in 1998. It was tasked with investigating and prosecuting what they refer to as high-level and priority crimes, including financial crimes, organised crimes and corruption. It was an independent and multidisciplinary unit with a unique methodology with combined investigation, forensic intelligence and finally prosecution.”

ADV NALANE: So if I may pause there. What you are saying is that this was a specialised unit. Correct?

MR LEDWABA: Correct.

ADV NALANE: You say it dealt with high-level and priority crimes.

MR LEDWABA: I confirm.

ADV NALANE: And also organised crime; so in other words, high level, very serious crimes.

MR LEDWABA: That was the intention of the legislature and it is so in the act itself.

10 ADV NALANE: Thank you. You may proceed.

MR LEDWABA: Paragraph 22:

“The NPA then was headed by Adv Ngcuka who had four Deputy National Director of Public Prosecutions who reported to him.”

We name the four divisions, as the first one being the National Prosecutions Services, NPS, which was responsible for the day-to-day prosecution of cases in the district, regional and high courts; and this was headed then by Adv Jan Henning. The second division was the Asset Forfeiture Unit which was headed by Adv Willie Hofmeyr.

20 The third division dealt with all the specialised divisions within the NPA. At that time that is where the Priority Crimes Litigation Unit referred to in abbreviation as PCLU, the Specialised Commercial Crimes Unit, SCCU in abbreviation as well as the Sexual Offences and Community Affairs Unit, called SOCA then, which the third unit was headed by Dr Silas Ramaite SC. The fourth division was ours,

the DSO, which was headed by Adv McCarthy.

ADV NALANE: And then in 23?

COMMISSIONER KGOMO: You are speaking softly, Mr Nalane.

Can you speak up, please?

ADV NALANE: Mr Ledwaba, in 23.

MR LEDWABA: 23 we are saying the DSO operated along a model of four desks which existed when I joined. The first desk was the Financial Crime Desk. That is how it was referred. The second one: the Public Corruption Desk. The third was the Racketeering and
10 Prevention of Organised Crime Desk; and the fourth was the Organised Crime Desk, which I then headed prior to my elevation.

ADV NALANE: If you can go back briefly to paragraph 22 where you talk about the specialised divisions. I do not know if you deal with the [indistinct] about what each division was doing, but the Priority Crime Litigation Unit, you expand some or do you want to deal with it here?

MR LEDWABA: I think we highlight the proclamation that created it and we call a mandate somewhere later in the affidavit.

ADV NALANE: And then 24.

MR LEDWABA: 24 is just to highlight that the DSO operated on a
20 so-called proactive troika methodology type of investigation. This then meant a complete integration of investigators and prosecutors being assigned on each project. Sometimes there would be accountants and/or other experts where needed; that would be assigned to a specific project on each of the DSO-authorised projects.

ADV NALANE: Then paragraph 25 deal with the period in March 2003.

MR LEDWABA: Yes, I confirm that I was appointed then as the Deputy of the Head of the DSO. In terms of the act, it was called investigative director and/or head of operations, being overall in charge of all the investigations and prosecutions in the DSO. The DSO then had investigation and prosecutors in the region. We had regional offices in Gauteng, Western Cape, Eastern Cape, KwaZulu-Natal and Free State. Those were the regional or provincial offices.

10 In 26 we highlight that at head office we had also subdivisions; the first one being Crime Analysis Division, CAD. The second one that has been mentioned in this commission, being the National Projects, Special National Projects Unit, SNPU.

ADV NALANE: If you may pause there. Can you explain just briefly what the function of the SNP was? Do you want to leave it for later?

MR LEDWABA: I can do it now. The SNPU initially was sort of a specialised project based in the office of the national director. And when I joined the DSO or shortly after my appointment, it was decided to move it from the national director and allocate it within the
20 DSO, because they were then investigating DSO-authorised projects and they were appointed as special investigators within the DSO. They came along carrying few TRC cases which were then lumped together with them in that unit. So they had two divisions – TRC cases and genuine DSO type of authorised investigation or projects.

ADV NALANE: I know we will come to the... I just wanted to just

have an overview of what it does, but you know we will deal with the case that we are dealing with at a particular time.

MR LEDWABA: I confirm.

ADV NALANE: Paragraph 26 you say, if you continue.

MR LEDWABA: There were also ad hoc projects divisions, one being called Crime Intelligence Collection Unit, which worked hand in hand with the SNPU. Then we had the normal HR, Human Resource Division and the Training Departments. In 27 again that is where I highlighted how the SNPU came into being. It was initially located in
10 the NDPP's office. That is where I met Chris, Adv Chris Macadam as then he was located in the NDPP's office with whom I dealt with on some TRC cases. And the last sentence says the SNPU later formed part of the DSO and they were all reporting to me.

ADV NALANE: And then 28?

MR LEDWABA: Just under 27 in paragraph, on page 1723, Chairperson.

ADV NALANE: Page 1723.

MR LEDWABA: Yes. We have an annexure, which shows the identification of SNPU and CICU, CICU, Crime Intelligence Collection
20 Unit, as they were working together and identifying cases as existed in that unit by 2003. The first group says "SNPU TRC files".

ADV NALANE: But before you go there, in other words, you are saying the unit CCU and SNP had files existing you were dealing with at the time.

MR LEDWABA: In 2003.

ADV NALANE: 2003.

MR LEDWABA: And they were grouped into two; the genuine. I am going to say the genuine DSO-authorised projects under the National Projects Office and the second group was the SNPU TRC files that they came along from Mr Ngcuka's office.

ADV NALANE: I know you deal with the projects office later.

MR LEDWABA: Yes.

ADV NALANE: But that is what you referred. You said, when you say generally authorised projects, this would be authorised in terms
10 of legislation.

MR LEDWABA: Correct.

ADV NALANE: And then SNPU TRC files?

MR LEDWABA: They brought them along from the National Director's office. And because Adv Macadam was then stationed in the SNPU, he managed to run those investigations maybe for two or three months in the DSO.

ADV NALANE: These are the TRC offices.

MR LEDWABA: The TRC type cases, files.

ADV NALANE: And that would have been part of the creation of the
20 PCLU.

MR LEDWABA: That was prior to the creation of the PCLU.

ADV NALANE: And as we know, the PCLU was assigned partly. Part of what their functions; they were assigned TRC cases as priority crimes.

MR LEDWABA: I think, so that we follow, it is March 2003. SNPU is

located from the NDPP's office to the DSO. April there is an additional proclamation by the president creating the PCLU with a specific mandate. And in May, Mr Ngcuka decided and it was approved by the NPA EXCO to identify the TRC cases as... the right word was 'specific offences' and that they are going to be located not anymore in the DSO, but within the PCLU. The initial proclamation of the PCLU did not include TRC cases.

ADV NALANE: We will come back to that in a bit more detail, but in paragraph 29 you deal with the turf war between the DSO and SAPS.

10 MR LEDWABA: I confirm, Chairperson.

ADV NALANE: Why do you think it is important for you to deal with that topic?

MR LEDWABA: It is important as later on or it has already been evidenced that there has been what we called a turf war between DSO then and SAPS on the core mandate of each of the two units, but later relevantly as to who between the two was supposed to do TRC investigations.

ADV NALANE: And at that time you were not in SAPS.

MR LEDWABA: No, I was never in the SAPS.

20 ADV NALANE: You were in the DSO.

MR LEDWABA: I was in the DSO in the NPA.

ADV NALANE: And the question will be: who must investigate cases that came up later, particularly the TRC cases for these purposes?

MR LEDWABA: Correct, because everything started after, in paragraph 28, after the President Mbeki handed in the report in

March 2003 and he made the speech on 15 April 2003 that the handling of TRC cases was handed over to the NPA.

ADV NALANE: And that is how you locate the turf wars between DSO and SAPS.

MR LEDWABA: Also, correct.

ADV NALANE: Then you deal with this matter again in paragraph 29. Can you expand on that; paragraph 29?

MR LEDWABA: I think the commissioner then was the late Mr Jackie Selebi. He wrote to the National Director, Mr Ngcuka, that
10 there has been a complaint. That is how it started; a complaint that DSO has downgraded their mandate. Instead of focusing on these high complex cases, we were now doing a run-of-the-mill type of cases for quick wins and running to the TVs and taking the work away from SAPS. This then resulted in meetings and we ended up signing sort of service level agreements where we agreed that DSO or Scorpions will focus on its core mandate, as it was then defined in the legislation and let the SAPS also focus on their core mandate with their relevant type of cases.

ADV NALANE: Paragraph 29, the next sentence. You say:

20 "I was even part of management meetings."

Just read that out.

MR LEDWABA: That is what I just mentioned that between the two units, there were many management meetings where we ended up agreeing on the way forward and signing service level agreements; each focusing on their core mandate.

ADV NALANE: And in paragraph 30 you emphasise that your understanding of the mandate of DSO was to investigate complex high-profile matters of financial crimes, corruption and organised crime.

MR LEDWABA: That is correct, as defined in the act. It was not that the DSO or Mr Ngcuka, the NPA, created the mandate, but it was defined in the legislation.

ADV NALANE: And then in paragraph 31.

MR LEDWABA: In line with what we agreed with the SAPS, even
10 prior to my taking of office, we created an intake of cases where there was a project management office which received and registered all referred DSO matters, which were initially for consideration, approval or refusal.

ADV NALANE: So this would ensure that you deal as DSO with matters that are within the mandate of the DSO.

MR LEDWABA: Correct.

ADV NALANE: Then 32?

MR LEDWABA: For the project management office will first assess if it falls within those four desks or core mandate. As before, there
20 were deputies running each of the desks. They will then refer that file to the desk who will assess the matter and then refer it to me for approval or not. And each file was then referenced with its unique file number.

ADV NALANE: So in other words, you would have the final say of where to direct the particular matter.

MR LEDWABA: Correct.

ADV NALANE: You will say this is a commercial crime. It must go to the financial desk.

MR LEDWABA: Correct.

ADV NALANE: This is a sexual crime. It must go to the relevant desk.

MR LEDWABA: You mention sexual. We did not do sexual; high financial crimes or corruption or organised crime.

10 ADV NALANE: Okay, thank you. And then from paragraph 33 you deal with your position as Head of Operations of the DSO from 2003 to 2005.

MR LEDWABA: Correct.

ADV NALANE: Can you explain that?

MR LEDWABA: I point out that I was appointed as the Head of Operation/Investigative Director of the DSO from 1 March 2003 until 30 June 2005.

ADV NALANE: If you just pause; when you say 'head of operations', what did that entail?

20 MR LEDWABA: The legislation identified the position as an investigative director and because of the position applying to the person being the head of operations, the title just follow, but it is not in the act. And it ran also, the person occupying that rank was the second in charge of the Scorpion Deputy Head of the... so I ran three ranks in one.

ADV NALANE: Yes, you may proceed with paragraph 33.

MR LEDWABA: I read it further. I say:

“I deem it necessary to refer the Commission to the applicable legislation regulating the parameters of my functions then. This is to enable the Commission to locate the misguided allegations made by the Calata Group and Adv Ackermann SC and Macadam that I stopped the investigation and prosecution of TRC cases. Understanding my role within the confines of the law, will provide much needed clarity to the Commission, Commissioners and Chairperson.”

ADV NALANE: Yes, and 34?

MR LEDWABA:

“My position as Head of Operations was regulated by the NPA Act, 32 of 1998. The NPA Act gives effect to section 179 of the Constitution. At all material times, I was obliged to carry out my functions in line with the Constitution, the NPA Act and the existing NPA policies. Overarchingly, I was to act independently and without fear or favour.”

ADV NALANE: 35?

MR LEDWABA: We highlight that the position of the Head of Operation was introduced in the NPA Act through an amendment of the Act in 2000. And for purpose of the record, we will cite in full the

section 7; firstly, the section 2 on page 1705 where section 1 says:

“The principal act is hereby amended (a) by the
insertion after the definition of ‘director’ of the
following definitions: Directorate of Special
Operations means the Directorate of Special
Operations established by section 7(1)(a). ‘Head
of Investigating Directorate’ means the Deputy
National Director referred to in section 7(3)(a) or
an Investigating Director referred to in section
10 7(3)(b), as the cases may be.”

If I may clarify, Chairperson; the first one being the Deputy National
Director being referred there would be Mr McCarthy or Adv McCarthy
as the Head of the investigating Directorate, the head of the DSO.
And the second one, the investigating director then was myself.

ADV NALANE: So you were investigating director.

MR LEDWABA: Correct.

“The ‘investigating director’ means a Director of
Public Prosecutions appointed under section 13
to the Directorate of Special Operations or as the
20 head of an investigating director established in
terms of section 7(1A).”

This essentially meant that the rank of special investigative director
was equivalent to a Director of Public Prosecution on a provincial
level.

ADV NALANE: Okay, thus far it says ‘investigative director’ means

the Director of Public Prosecutions.

MR LEDWABA: Yes, the ranks were the same.

ADV NALANE: Yes, you may proceed.

MR LEDWABA: In paragraph 36 we quoted the then section 7 as it existed and in particular subsection (1A) which reads as follows:

10 “There is hereby established in the Office of the
National Director an investigating directorate to
be known as the Directorate of Special
Operations, DSO, to investigate and carry out any
functions incidental to investigations -
(a) relating to serious, high-profile or complex
corruption, commercial or financial crimes and
organised crime.”

This is the core mandate as it was defined for the DSO then,
Chairperson and Commissioners.

20 “(i) Also matters referred to the investigating
director by the national director in terms of
section 28(1)(b); or
(II) Referred to the investigating director in terms
of section 28(1)(a) or 28(13).”

ADV NALANE: I know we will come to this later. I would explain, but
just to explain it further. So 1A(a) says this deals with the
investigating director.

MR LEDWABA: Correct.

ADV NALANE: He may investigate matters relating to serious, high-

profile, complex corruption or commercial financial crimes and organised crimes. That is the function of the investigating director.

MR LEDWABA: And to our understanding then, this was the core mandate of the DSO and nothing else.

ADV NALANE: And then (i), which you just read; the national director may also refer matters.

MR LEDWABA: Correct. There was a provision in the NPA Act under 28(1)(b) which gave the national director overriding powers on type of cases you direct the special director or the investigative
10 director to investigate, even though they did not strictly fall within the mandate of the DSO.

ADV NALANE: You may proceed.

MR LEDWABA: Under the Roman figure, the other in page 1706 relate to the legislative parameters of the mandate, being the Prevention of Combating of Corrupt Activities of Act 2004, 12 of 2004 as well as the Prevention of Organised Crime Act, 121 of 1998.

COMMISSIONER GABRIEL: And what were the additional related statutory offences or categories of statutory offences?

MR LEDWABA: These are the two that I mentioned under (b)(i) and
20 (b)(ii).

COMMISSIONER GABRIEL: Is it limited to just those two?

MR LEDWABA: At the time, correct.

COMMISSIONER GABRIEL: At that time?

MR LEDWABA: Correct.

ADV NALANE: You may proceed, 37.

MR LEDWABA: As the head of the operation or investigating director, I was the only person who could authorise an investigation in the whole country in terms of section 28(1)(a) and 28(13) of the NPA Act.

ADV NALANE: Just explain that.

MR LEDWABA: I think if we read first 28(1)(a) as well as 28 in paragraph 13, then I can explain.

ADV NALANE: Proceed.

MR LEDWABA: The subsections are then referred to in full under
10 paragraph 38, Chairperson. The first one being 28(1)(a) which reads as follows:

“If the investigative director has reason to suspect that a specified offence has been or is being committed or that an attempt has been made or is being made to commit such an offence, he or she may conduct an investigation.”

And the word “may” is highlighted and I will explain. The next one is section 28(1)(b) which says:

20 “If the national director refers a matter in relation to the alleged commission of a specified offence to the investigative director, the investigating director shall conduct an investigation or a preparatory investigation as referred to in subsection 13 on the matter.”

We included section 28(2)(d) which reads:

“If the investigative director, at any time during the conduct of an investigation, is of the opinion that evidence has been disclosed of the commission of an offence which is not being investigated by the investigating director concerned, he or she must without delay inform the National Commissioner of the SAPS of the particulars of such case.”

10 And the last one is section 28(13).

“If the investigating director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of section 28(1)(a), the investigating director may hold a preparatory investigation.”

ADV NALANE: You are going to go back to 37 to explain.

MR LEDWABA: Correct.

ADV NALANE: You wanted to read 28(1)(a), 28(1)(b) ...[intervenes]

20 MR LEDWABA: In terms of ...[intervenes]

ADV NALANE: And how they relate.

MR LEDWABA: Yes, the overriding power to the investigative director is in terms of 28(1)(a) and he is fettered with a discretion. He considers a matter that must strictly fall within those four type of mandated offences. And the word “may” then says he has got a

discretion to approve or decline such a request. And once he is authorised, it is a DSO investigation and we call them projects. Under (b) the word is “shall”.

So it says once a matter is referred to the national director, apart from us, and he considers it deems to be investigated by the DSO, he had the powers in terms of that subsection to refer a matter, even though he did not fall within the confines of the mandate. He then directs it to the DSO and the head of the directorate. There is no option. The wording says “shall”. It was sort of a directive
10 compulsory; shall then conduct that investigation.

And under (d), 2(d) also says those type of cases not falling under DSO “must” be referred to SAPS. And that is our understanding of the legislation.

ADV NALANE: So you had a discretion that if the national, like I said, you must investigate and at your discretion.

MR LEDWABA: I did not have. I was compelled to do that.

ADV NALANE: You may proceed.

MR LEDWABA: Under 39 we highlight that specified offences. If we go back to 28(1)(a), the preceding paragraph 38, it says “specified
20 offences”, which are then... that is the only type of offences that the DSO could investigate. And then in 39 they are then defined within the act as to what are specified offences and it read that:

“Any matter which in the opinion of the head of an investigating director falls within the range of matters as contemplated in section 7(1).”

We highlighted that 7(1) read that offences related to serious, high-profile or complex; one: corruption; two: serious, high-profile or complex commercial or financial crime; three: serious or high-profile or complex organised crime cases; and lastly, those relating to racketeering and the prevention of organised crime. So these were the four core mandates of the DSO then.

ADV NALANE: And then paragraph 40?

MR LEDWABA: As I mentioned earlier on, Mr Ngcuka as the NDPP saw it fit in April 2003 to declare all TRC cases as priority crimes and
10 place them within the newly established unit called Priority Crimes Litigation Unit; abbreviated as PCLU.

The PCLU was established in terms of a presidential proclamation in March 2003 and it was responsible for certain identified also priority crimes that were defined in the proclamation. If we can take to paragraph 43; that is where the type of priority crimes identified in the proclamation for the creation of the PCLU then are identified; and it says in paragraph 43:

20 “The PCLU was mandated ‘to direct investigation and prosecution’ in relation to various priority crimes, including, as identified in the proclamation, serious national priority crimes, such as terrorism, sabotage, high treason, sedition and international crimes.”

COMMISSIONER GABRIEL: Earlier you said that Mr Ngcuka had also said that these TRC cases were specific offences. What did you

mean by that?

MR LEDWABA: Initially they were not. They were not identified, if we follow the mandate or legislative mandate of the DSO. They are not included there. We are not covered, but they came along and they are located in the DSO. PCLU is created with this mandate, also not covering the TRC cases. He then decides in order for them to fall within the PCLU proclamation, to identify them as defined in the act as priority crimes.

COMMISSIONER GABRIEL: Priority crimes.

10 MR LEDWABA: And then he upscaled them from ordinary cases to priority crimes and now they formally fall within that proclamation.

COMMISSIONER GABRIEL: Thank you.

ADV NALANE: And then while you are there, just the reporting lines, just to get back. There is PCLU. There is DSO.

MR LEDWABA: Correct.

ADV NALANE: And they all fall under the NPA.

MR LEDWABA: Yes. When we did the four divisions, subdivisions in an earlier paragraph, I highlighted that Dr Ramaite was in charge of all these specialised new units. All of them were new in 2003. The
20 SCCU, the SOCA and now the new PCLU; they were then reporting directly to Dr Ramaite and the DSO was separate from them reporting to Adv McCarthy and the two together with the other two were then reporting to Mr Ngcuka.

ADV NALANE: You were...

MR LEDWABA: On paragraph 42.

ADV NALANE: 42, yes, but just ...[intervenes]

MR LEDWABA: Sorry, under 41 I am saying, we say it was the decision of the NDPP, obviously communicated it to NPA EXCO management. It was endorsed and it became an official NPA policy that now TRC cases from that day are now located within the PCLU.

ADV NALANE: And as you testified earlier, they were in the SNPU at some point.

MR LEDWABA: Correct. Correct.

ADV NALANE: They then went to DSO, and DSO transferred to
10 PCLU.

MR LEDWABA: If we now follow this new policy.

ADV NALANE: The new policy.

MR LEDWABA: Correct.

ADV NALANE: Ja, you may proceed.

MR LEDWABA: And it is highlighted in paragraph 42.

ADV NALANE: Yes, just read that for the record.

MR LEDWABA: We are saying:

20 “Following upon this new policy, it was agreed
 that all TRC cases that were located within the
 SNPU of the DSO had to be transferred to the
 new PCLU.”

And that is around March, April 2003.

“As indicated, the PCLU reported directly to Dr
Silas Ramaite. The DSO was therefore not
responsible for the investigation and prosecution

of TRC cases since the inception of the policy.”

I have already dealt with paragraph 43, Chairperson and Commissioners, but under 44 we highlight that the PCLU was therefore clothed with both investigative and prosecutorial powers from that proclamation that created it. The challenge, however, that I have to mention, Chairperson was that no specific investigators were employed or assigned to the PCLU from its inception.

ADV NALANE: So if you may pause there. In paragraph 43 you summarise the proclamation.

10 MR LEDWABA: Correct.

ADV NALANE: And which said:

“The PCLU is mandated to direct investigations
and prosecutions.”

- So both investigations and prosecutions.

MR LEDWABA: As highlighted in the proclamation, correct.

ADV NALANE: But you say in practise they did not have any investigator.

MR LEDWABA: At inception during my time there, there were never, they never appointed or assigned investigators to PCLU.

20 ADV NALANE: Thank you, you may proceed.

MR LEDWABA: In 48, 45, paragraph 45.

ADV NALANE: Why was that sought? If there is a proclamation, it specifically says you will be assigned, you will do investigations; why will they not assign investigators? Do you know?

MR LEDWABA: I will say that was above my pay grade. I do not

know.

ADV NALANE: Okay. You may proceed.

MR LEDWABA: In paragraph 45 we say, maybe to answer that.

“It was the understanding of the NPA EXCO Management meetings where Dr Ramaite was in attendance that the investigation of the PCLU would be done by South African Police Services in accordance with the constitutional mandate of the South African Police Services.”

10 ADV NALANE: And you were part of NPA EXCO Management?

MR LEDWABA: Correct.

ADV NALANE: And that is your understanding as well.

MR LEDWABA: Correct.

ADV NALANE: You may proceed.

MR LEDWABA: 46.

20 “The Calata Group in their papers alleged that when the PCLU, through Advocates Macadam and Ackermann, approached Commissioner de Beer, who was the Divisional Commissioner of the South African Police, Mr de Beer advised them that the NDPP, being Adv Bulelani Ngcuka, must approach President Mbeki for a decision on who should investigate the TRC cases between the DSO and SAPS.”

ADV NALANE: I think if you may pause there. Chair, I realise it is

one minute before tea.

CHAIRPERSON: Yes.

ADV NALANE: If we may pause here.

CHAIRPERSON: Yes. This might be an appropriate time to adjourn for tea. We will reconvene at quarter past 11.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you, Mr Nalane?

ADV NALANE: Thank you. Thank you. Mr Ledwaba, you were just
10 dealing with paragraph 46 and you're about to deal with paragraph
47.

MR LEDWABA: I confirm.

ADV NALANE: Yes. Can you read 47 and then comment?

MR LEDWABA: In paragraph 47:

47 In his testimony before this Commission, Commissioner,
Chairperson, Commissioners, Advocate Ngcuka said there was
following what Mr de Beer advised Advocate Macadam and
Ackerman for him to approach or for him to approach the President.
He said there was no need for him to approach the President as all
20 TRC cases under the mandate of the PSLU were understood to be
investigated by SAPS, South African Police Services.

ADV NALANE: I think just to put a bit of context, De Beer was
Divisional Commissioner of South African Police.?

MR LEDWABA: Correct.

ADV NALANE: And as we read from the papers and some of the

events we have had, Advocate Macadam and Advocate Ackerman SC, said they approached SAPS.

MR LEDWABA: In August 2003.

ADV NALANE: And there they were encountering difficulties with getting the cases investigated.

MR LEDWABA: Correct.

ADV NALANE: And when they asked De Beer to assign investigators, he wrote back to them and said as far as he understood, the PCLU was the one assigned to investigate TRC cases.

MR LEDWABA: No. I think his letter read that according to him, the President says NPA cases, TRC cases must be under NPA and his understanding was that DSO would then investigate the TRC cases as those police, most of those police that dealt with them have moved or been appointed as investigators within the DSO. That was his understanding.

ADV NALANE: And then he said if you need the mandate to be changed, go to the President.

MR LEDWABA: If you need clarity, he is saying I think along the lines that SAPS will only get involved once the President has clarified or instructed them.

ADV NALANE: And so the impression is that SAPS refused to investigate the TRC cases?

MR LEDWABA: I am not in a position to answer for them.

ADV NALANE: That is fine. You can proceed then.

MR LEDWABA: In 48, I say:

48 All PCLU cases then were investigated by SAPS and none since that proclamation were ever declared or investigated as a DSO project. I am highlighting a few cases that I am aware of that were dealt with by PCLU and investigated by SAPS. The first one is in 48,

48.1 Referred to as the State versus Geisser & Wisser. This was a matter investigated by SAPS and managed by, I have to correct that and it must read PCLU and not SNPU. I missed that when we did corrections. It involved nuclear weapons-grade uranium
10 enrichment with a plant to Libya. The SAPS arrested the directors of Kirsch Engineering, PTY Ltd, and the matter was prosecuted by PCLU in Pretoria High Court.

48.2 The second one is under 48.2, Referred to as State versus Asher Karn. I'm not sure how to pronounce that surname, K-a-r-n. This matter was also investigated by SAPS in Cape Town and managed by the PCLU. The investigation dealt with import of nuclear devices to South Africa, then.

48.3 Refers to other Foreign Military Assistance cases such as the then arrest of South African citizens in, first group in Zimbabwe,
20 another group in Equatorial Guinea, which were all investigated by SAPS, South African Police Service, and prosecuted by PCLU.

ADV NALANE: What are you making in 48, is that all PCLU cases were handled by SAPS?

MR LEDWABA: Correct.

ADV NALANE: .

MR LEDWABA: You say none were ever declared or investigated as a DSO project.

MR LEDWABA: Correct. Which would have entailed that DSO investigators are assigned to them, but they none were ever dealt with within the NPA Act.

ADV NALANE: Yes.

MR LEDWABA: The proclamation for them was separate, and the proclamation and legislation for DSO was separate.

ADV NALANE: I see. And 49?

10 MR LEDWABA:

49 Was saying in line with that new NPA policy of declaring TRC cases and transferring them to PSLU, and their mandate to investigate priority crime, then including TRC cases. The head of the DSO being Advocate McCarthy confirmed that all TRC cases that were within the DSO, that is now in 2003, Chairperson, were to be transferred and formally handed over to the PCLU. This occurred at the same time when I signed my performance contract with Advocate McCarthy.

20 Therefore, the TRC cases, save only the two matters that Advocate Ngcuka insisted that I, as head of DSO, must attend to them, were further not included in my performance indicators to be measured for purpose of my employment contract. I am simply saying when I signed my performance contract, TRC matters were not part of that because they were transferred to PCLU, and they did not form part of the mandate of the DSO. They were not covered under

my assessment or performance contract.

ADV NALANE: And then at 50?

MR LEDWABA:

50 In line with what we had just discussed, I requested the Project Management Office, which was headed by Chief Investigating Officer Mr Jonker, Kasper Jonker, to provide us, the DSO management, with an audit of all matters that had been investigated and dealt with by the SNPU then. Mr Jonker prepared the audit, and I attached that audit as Annexure MGL1, as the list of all cases that
10 prevailed in the SNPU then.

ADV NALANE: What I suggest we do, the list is quite long, but just highlight the heading, unless it is necessary to read each and every project.

MR LEDWABA: I think maybe just the heading and say it is 51.1 to 51.10 and then the next heading, because it is the long list.

ADV NALANE: The way it is necessary, to highlight specific cases which you think might make a point, one has to do that.

MR LEDWABA: Correct. Thank you. In sub-paragraph 51.1, we identified those that are referred to as genuine DSO-authorised
20 projects that were under the CICU and SNPU projects.

ADV NALANE: In other words, there are 10.

MR LEDWABA: This would have gone through the Project Management Office and assigned. Yes, and authorised in terms of 28(1)(a), all of these 10 projects. I do not think they are not relevant for purpose, I do not have to read them, Chairperson.

51.2 Is the relevant ones which are headed as SNPU TRC cases. We have listed, according to Annexure MGL1 in page 1723, 14 of such TRC, as they were called TRC cases, that existed in the SNPU then.

ADV NALANE: And then 51.3 is the list of closed cases, those files.

MR LEDWABA: Yes, they are. We also highlighted those files that were closed according to the Project Management. I think only one there is relevant for purpose of the memo referenced by Mr Leask and attached to the papers.

10 ADV NALANE: And just, you know, if you cast your eye through the list of the TRC cases which you were involved in posting and handling on page 1711, are you aware if any one of those cases were prosecuted?

MR LEDWABA: If you mean then, I do not think any of these were prosecuted then.

ADV NALANE: At the time.

MR LEDWABA: At the time, but I have been following the proceedings of this Commission and I hear that subsequently after I left or even now, some are only being attended to as late as 2024 and
20 2025.

ADV NALANE: This is what we have learned through following the proceedings of the Commission.

MR LEDWABA: Correct.

ADV NALANE: And then if you turn to page 1712, page 52.

MR LEDWABA: Paragraph 52.?

ADV NALANE: Yes, paragraph 52, yes.

MR LEDWABA:

52. In line with my understanding of the NPA policy, I formally and officially transferred all TRC cases that were within the SNPU of the DSO, to the PCLU.

ADV NALANE: And paragraph 53?

MR LEDWABA:

53 On 15 July 2003, after I had taken the decision to transfer the cases to, TRC cases, to the PCLU, I issued two memoranda.
10 One addressed to the then head of SNPU, Advocate Tongwane, Obe Tongwane, and another to the Chief Investigating Officer within the DSO, Mr Andrew Leask, who has already testified before this Commission. I have been unable to locate the one that I addressed to Advocate Tongwane, but the one that I addressed to Mr Leask is annexed hereto as Annexure MGL2. And I know it has been also attached to the Calata papers.

54 In 54, we quoted the memo in full, and if I may read the content thereto.

ADV NALANE: Is it important to read them, the content?

20 MR LEDWABA: Sorry?

ADV NALANE: Why do you want to read the whole of it, except?

MR LEDWABA: I think this is the number of my evidence. I have been accused that based on this memo, I, on behalf of the DSO or on behalf of whoever, I took the decision to stop TRC cases being investigated or prosecuted and/or stopped DSO investigators from

being involved. And the authority of that notion is being used referencing this memorandum.

ADV NALANE: Go ahead.

MR LEDWABA: The memorandum is MGL2, which is in page... (intervenes).

CHAIRPERSON: 1724.

MR LEDWABA: 1724. Thank you, Commissioner. The memorandum is referred to, headed as an internal memorandum, which I addressed to CIO Leask, and as I said, he already testified
10 before this, and It is from myself, and the date is 15 July 2003. The subject is SNPU Investigations.

1. I say:

“Due to the recent creation of the PCLU, it has become necessary to redefine the mandate and operation of the SNPU as follows.

(i) Identify TRC cases. And I quote,

“I have decided that South African Police Services must take over the investigation of all such cases currently handled by you.”

20 And by you, Chairperson, I mean the SNPU.

“Your files should be closed off and all materials given to the PCLU. It must also be given the storeroom currently being used.”

That is to amplify here the TRC will slot in a separate storeroom there, and because we are moving them to PSLU and

SNPU, that is not you make use of it for their core projects. We said they must transfer that storeroom with all its containers to PCLU.

ADV NALANE: So was the SNPU and PCLU whatever in the same building?

MR LEDWABA: Correct. We were all in the VGM building, at Head Office.

ADV NALANE: Yes, proceed?

MR LEDWABA: "Notwithstanding the above decision, Adv Tongwane must finalise what was called Black Cats and Winnie Mandela cases.

10 "And I amplify that this is due to the fact that the national director of public prosecution has requested a speedy finalisation of the two matters and this must be done before 30 July 2003."

The TRC was stored in a separate storeroom there. And because we are moving them to PSLU and SNPU does not make use of it for their core projects, we said they must transfer that storeroom with all its containers to PCLU.

ADV NALANE: So are the SNPU and PCLU in the same building?

20 MR LEDWABA: Correct. We were all in the VGM building, head office.

Just to explain here, Mr Ngcuka, when he transferred or took decision that TRC cases are now transferred, he used 28.1b that we authorise these two, and the two remained as DSO investigators and prosecutors. Mr Tongwane was the head of the SNPU and is a prosecutor dealing with all matters in the SNPU. So he was tasked

together with his team to finalise these two matters of TRC-related by
30 July 2003. I continue,

“It may be necessary for,”

This is I am now addressing to Mr Leask, I say:

“It may be necessary for your SNPU investigators
to introduce certain witnesses with whom they
have dealt to the South African Police
investigators.”

ADV NALANE: Mr Ledwaba, you read the sentence “I have also
10 transferred the two researchers.”

MR LEDWABA: Sorry, I missed that, after July 2003. It reads:

“I have also transferred the two TRC researchers
to the PCLU.”

I highlighted earlier on, but here it is in black and white that,
as Mr Macadam testified, the DSO then had employed two TRC
researchers. Their core mandate was to deal with TRC cases. So
when the TRC cases are moved out of the DSO to PCLU, they also
moved along with the TRC cases to go and assist Mr Ackerman and
his team.

20 “It may be necessary for your investigators,”

Now this is the SNPU investigators or DSO investigators,

“To introduce certain witnesses with whom they
have dealt to the SAPS investigators and you are
accordingly authorised to conduct the necessary
handovers”

So to amplify again, we just did not say, that is your baby TRC cases, we assisted. We transferred the cases to them, we give them manpower, we give them storeroom, we give them all the tools that we had in the DSO, they went along with the TRC cases or the files. So they had all the backing and support from the DSO.

ADV NALANE: You testified earlier that as far as you knew, all PCLU cases were investigated by the SAPS.

MR LEDWABA: That is correct. And that is how I highlighted there that the first sentence, SAPS must take over the investigation of all
10 TRC cases currently handled by the SNPU.

ADV NALANE: That is in the opening line.

MR LEDWABA: Correct.

ADV NALANE: Proceed?

MR LEDWABA: In Roman figure (ii) to (v), we identified four projects. The first one being Operation Sunflower.

ADV NALANE: Before you proceed, this is not TRC cases now, Operation Sunflower.

MR LEDWABA: A few years ago, I think Sunflower is identified in the annexure. I think it dealt with, if I am allowed to quickly look at...

20 CHAIRPERSON: Yes, what is the relevance of you referring it to the other matters that are dealt with in the internal memorandum? That is Operation Sunflower and Operation Black Widow.

MR LEDWABA: Is to show that it was clear to us then that these are now Mr Ackerman's babies and are to be investigated by SAPS.

CHAIRPERSON: But how relevant are these in relation to the inquiry

we are conducting?

MR LEDWABA: I think the only one that is maybe relevant is the final caption, which was then handled personally by Mr Ackerman himself and the foreign mercenaries that were identified in their proclamation that we transferred formally to them, Roman figure (iv) and (v)5.

ADV NALANE: But the point is that TRC case, which we deal with in Roman figure (i), you made sure they are transferred.

MR LEDWABA: Correct.

ADV NALANE: And that you deal with, you quoted the memo in
10 paragraph 54, in the title.

MR LEDWABA: Correct.

ADV NALANE: You can go to paragraph 55 now.

MR LEDWABA:

55 It is clear from this memorandum that neither myself as head of operation nor the DSO stopped the investigation and prosecution of TRC cases. Instead, I merely complied with the NPA policy at the time and transferred all the TRC cases to the PCLU.

56 it is also evident from the above memo that I was concerned that the PCLU be assisted with a proper handover. I even
20 went further in my assistance to the PCLU by transferring the two TRC researchers who were located within the DSO and who had been dealing with the TRC cases, amongst other matters, to the PCLU. This was to ensure that they continue with full assistance.

57 I also made it very clear to Mr Leask that his handover must assist the PCLU by ensuring that the DSO investigators who

were charged with the investigation of TRC cases introduce witnesses they dealt with to the SAPS investigators who were to take over the TRC cases in their assistance with the investigation of TRC cases.

This is just to say we just did not dump everything on them but we were prepared to offer them assistance and do a proper handover, even introducing witnesses to them.

ADV NALANE: And then the next topic is what the headings say. The Calata group have mischaracterised my instructions to
10 Adv Tongwane and Mr Leask in the memoranda of 15 July 2003 as a decision to stop the investigation of TRC cases.

MR LEDWABA: Correct.

ADV NALANE: You deal with that under the relevant paragraph 58 up to 60?

MR LEDWABA: I confirm.

ADV NALANE: Yes. In summary, what are you saying there?

MR LEDWABA:

59 On reading the Calata founding affidavit, especially the one of Mr Lukhanyo Calata, he seems to have made a statement in 59,
20 that, reading from that memorandum I quoted, he comes to the conclusion that that meant a decision to stop all TRC investigation and he characterised that as a remarkable, and I quote him, as a remarkable decision by the DSO to stop the investigation of TRC cases.

MR LEDWABA: You are quoting from paragraph 59?

MR LEDWABA: 59, Correct

ADV NALANE: . Yes. And how do you conclude?

MR LEDWABA:

60 In 60, I say neither myself nor the DSO stopped the investigation of TRC cases. My memorandum to Mr Leask as Chief Investigating Officer within the DSO contained a decision which I took in line with the proclamation and the declaration made by the then NDPP Mr Ngcuka that all TRC cases were priority crimes now falling within the PCLU.

10 ADV NALANE: So you're just carrying out your functions?

MR LEDWABA: And the trans-formal transfer from DSO to TRC, it was not my own making but an NPA decision.

ADV NALANE: Thank you. You then deal with requests by the PCLU's advocates, Ackerman SC and Macadam, for DSO assistance.

MR LEDWABA: Correct. As we initially said that the proclamation gives them investigative, it gives the PCLU investigative and prosecutorial mandate, but they do not have investigators. Mr Macadam with his pre-occupation being in the DSO left in May 2003 and joined the PCLU.

20 61 In May 2003, he now advocate Macadam in his capacity as Deputy Director in the PCLU filed applications in my then office requesting that I declare certain TRC cases as projects and as he used the terminology under Section 28(1)(a) of the NPA Act in order for the TRC cases to be investigated by the DSO.

And I confirm that he did file, I think, four applications then.

62 This request fell outside the authority I held as the Head of Investigations under the NPA Act as fully detailed in the preceding paragraphs. I then advise Advocate Macadam of my position as determined in the NPA Act and that I could not assist him. However, even at that stage, I pointed out to him that Section 28(1)(b) of the NPA Act was applicable and advised him that it may be prudent for him to approach the NDPP with his request. Advocate Macadam was of the view that my interpretation of the NPA Act was wrong and he was unwilling to heed my advice at that stage, now referring to the
10 first encounter in May 2003.

ADV NALANE: So here, they are asking you to authorise an assigned biscuit also?

MR LEDWABA: In terms of Section 28, (1)(a), which we agreed earlier on, it deals with the co-mandate of those four legs which TRC cases, strictly speaking, cannot fall under any of those.

ADV NALANE: It has been transferred to the PCLU.

MR LEDWABA: It has been formally transferred to the PCLU.

ADV NALANE: Yes, proceed?

MR LEDWABA: So, I do not close him off. I still advise to him that
20 rather resort to Section 28(1)(b) and approach the NDPP. He will decide whether, in his opinion, as they are already specified offences, he can then direct in terms of that subsection and instruct the DSO to investigate them. He did not agree with me then. He believed that I was wrong.

ADV NALANE: And this was the first of his, you say in May 2003.

MR LEDWABA: That is the first official encounter I had with him as a PCLU person on TRC cases.

ADV NALANE: And then 63?

63 Again, on about 15 July 2003, at the request of the two, Advocate Ackerman and Macadam, we held a meeting in my office. The two of them requested me again to assist the PCLU with investigation of TRC cases, using the legislative process of declaring certain matters as projects in terms of the NPA Act. Again, they were using Section 28(1)(a) as their tool to have them authorised as projects.

10

64 I advised them again that I was unable to assist them under 28(1)(a).

ADV NALANE: Then 65?

65 I noted that Advocate Macadam and his affidavit filed with this Commission described this meeting I had with them in July as being unpleasant. In my view, the meeting was not unpleasant. I merely communicated that I would not authorise those applications under 28(1)(a). Advocate Macadam was unhappy that I declined his request. And I point out that even in that meeting, I again emphasised to them that their best avenue would be to invoke 28(1)(b), which they must first approach the NDPP as an option for them as the PCLU.

20

66 They were obviously not happy with my, I call it, advice then to them. And in 66, I say that unhappiness over my decision and interpretation of the NPA Act is grounded in the context of my

professional journey within the NPA. Both Advocate Macadam and Ackerman SC were much senior to me when I joined the Attorney General's Office in 1995. I mentioned that Advocate Ackerman was already a deputy DPP then and I was just a junior state advocate and was way above my level of seniority in 1995.

Advocate Macadam was also senior to me then. In 2003, however, I became their senior. And it appeared to me that both Ackerman SC and Macadam were not willing to accept advice from someone who they still clearly regarded as their junior. And maybe
10 that is why Mr Macadam ended up describing our meeting as unpleasant.

68 I say it is unfortunate that both of them, Advocate Ackerman SC and Macadam, did not follow my advice as early as May, July, and July 2003. However, in December 2003, it appears to me that the penny finally dropped and they did exactly what I have been saying to them and they approached the NDPP, Mr Ngcuka, in terms of the correct subsection being 28(1)(b), as I had been advising them since May 2003, July 2003 and I will also show that I did the same in November 2003. Only then, in December, they followed my
20 advice.

ADV NALANE: Then the next topic you deal with is the Notice in terms of 3.3, which has brought you to this Commission.

MR LEDWABA: Correct.

ADV NALANE: You deal with that in paragraphs 69 and what?

MR LEDWABA: Correct. The notice is attached to the bundle so we

do not have to go into detail, but you comment on what you understood that you have been accused of or blamed, either wrong or rightly of.

MR LEDWABA: I confirm in those following paragraphs, 69 to the end.

ADV NALANE: I think 69 is, you do not have to do that for it is common cause.

MR LEDWABA: I'll start at 71.

ADV NALANE: Yes.

10 71 It is incorrect to say that the DSO at any stage would not investigate and a court would not investigate TRC cases. This I read from the Calata papers. As indicated in the preceding paragraphs, I informed Advocates Ackerman SC and Macadam that I, as the head of the operation, was unable to authorise the investigation of TRC cases in terms of Section 28(1)(a) of the NPA Act, but did not stop there. I implored them to rather resort to the provisions of Section 28(1)(b). They were simply not prepared to accept my advice at that stage. Sanity finally prevailed and they followed this advice and approached the NDPP after almost six months, only in December
20 2003.

72 In paragraph 72, I deal with my third encounter with the two of them as PCLEO approaching DSO to obtain assistance in investigators. If the Commission remembers, after our July episode, they do not agree with me. They decide to go to SAPS. They approach Commissioner De Beer in August or somewhere in August.

He writes them that letter in August 2003 and we have already highlighted where SAPS says, oh no, we can't help you, go to the President. I do not know whether they did inform Mr Ngcuka, but Mr Ngcuka testified that he would not have approached the President. They then, in November, decide to revert back to the DSO. Now that is what I call the third encounter. It is highlighted in 72.

On 11 November 2003, I received a memorandum from Advocate Ackermann SC. In this memorandum, Advocate Ackermann stated, amongst other things, that, and I quote, On 3
10 November 2003, he is directing this to me,

“On 3 November 2003, you informed me that you would assign the declaration in terms of Section 28(1)(b) and would appoint SSI De Lange to conduct the necessary investigation.”

So he is confirming that I had a chat or a meeting with him on 3 November 2003 in our third encounter, where I again confirmed to him that once you obtain an approval from the NDPP in terms of 28(1)(b) I would gladly approve. I have no option, it is an instruction.

I would approve the matters as DSO projects and will
20 assign the preferred SSI main special senior investigator, the identified De Lange, and I agreed that once you do that, I have no option, I'll do that. And this is what he confirms.

ADV NALANE: Then 73?

73 I am saying, however, he is completely misrepresenting my advice to him. He gives it to, as if I had already agreed, that bring the

matters to me, I'll authorise them under 28(1)(b), but that is not so. I explained to him, he knows how 28(1)(b) operates, I have been telling him, but I say there it refers to the authority of the National Director. He gives him only the National Director that prerogative to supersede the mandate of the DSO, and I was not the NDPP, it is common cause.

What I conveyed to him on the third was that he must approach the NDPP under that subsection and if the National Director approve his request, I would then approve the project and appoint SSI
10 De Lange from the DSO, probably with others, to conduct the necessary investigation. Just to strengthen, to say, I told him 28(1)(b) is available, I will accede and comply with 28(1)(b), provided it comes correctly from the National Director. Only him can instruct with that word shall, to the investigating director. Again, on that day, he did not do.

74 I expressly pointed out to Ackerman that I have been advising the two of them all along, to first approach the National Director, as he was the only one in terms of the Act to issue a directive in terms of 28(1)(b). Now, this is the third time I am telling
20 them. Then he left.

75 On about 10 November 2003, Advocate Macadams submitted four TRC matters for consideration in terms of, now they left 28(1)(a), they're using the correct subsection 28(1)(b) and he also referred to 28(13) stating of the NPA Act. This included the instruction that Senior Special Investigator De Lange be designated

as the investigator to deal with the four matters.

76 I informed in my office, Advocate Macadams, that the application he had forwarded to me then was again not in compliance with the prescript of 28(1)(b). I again explained to both of them that I was unable to authorise the four matters, up until they'd followed the prescripts of the letter of the law by approaching Mr Ngcuka. If he agrees with them, he would then issue a directive and then we will then authorise. That is all I said to them.

77 I say, I never oscillated in my advice to them, to the PCA. I
10 advised them to first approach the National Director, which was the correct route, who would then issue the required directive and instruct me or instruct the DSO to declare those TRC cases under the DSO legislation and assign DSO investigators. That was the only way it could be done.

ADV NALANE: In 78, 79 and 81, we can refer to MGLM 5, which is on pages 1745 and 1746. You can do that by reference to.

MR LEDWABA: Yes.

78 Under 78, just to remind the Commission, May 2003, I tell Mr Macadam, he was alone, that go to the NDPP, use 28(1)(b). He
20 does not agree with me. July, they are two. Macadam and Advocate Ackerman SC. I again, they still relied on 28(1)(a). I again tell them or told them, please use 28(1)(b). You either sign as the NDPP or you approach the correct NDPP who, after consideration, then decides to authorise them and instruct the DSO to do. They do not do it. We come to November, same script, same results. They do not

do it.

Now, under 70, paragraph 78, I say now it is common cause that the PCLU finally accepted my advice and directed their applications correctly to the NDPP on 8 December 2003. Then NDPP approved their request and duly signed the directive instructing me as the DSO to authorise the matters in terms of 28(1)(b), only on 24 February 2004.

In support, I attach as an extra MGL4 for the relevant directive that was signed by the NDPP on 24 February 2004. The
10 memo, as Advocate Nalana has said, as he has said, is in page 1745.
ADV NALANE: If you may turn to that page, of course, you repeat in paragraph 79, but just stick to that. What does it say? Investigation into?

MR LEDWABA: The memo is originating from ONTOP, Office of the Head, Priority Crimes Litigation Unit Headquarters. That is now Mr Ackerman's unit, PCLU. He refers it as an internal memo.

ADV NALANE: What it says to Head of Operations?

MR LEDWABA: It is forwarded to Head of Operations being Head of Operations, DSO. Head of Operations being myself. And It is
20 purported to be from the, it is from the NDPP. It is dated 8 December 2003 and the heading is Investigation of TRC Cases by the DSO. I quote, he says:

"I have decided in terms of Section 28(1)(b) of Act 32 of 1998, that the following, I see there is a spelling, it says three cases, but they listed four, arising from the TRC being investigated by the

DSO. Under Roman figure 1, they identified kidnapping, assault and murder of the PEBCO 3. Roman figure 2, Murder of Brian Ngulunga.

CHAIRPERSON: Ngulunga.

MR LEDWABA: Thank you.

CHAIRPERSON: There must be a spelling mistake.

MR LEDWABA: I am reading it as it is, Commissioner. And I think the suspect, the main suspect was Van Rensburg on this one.

CHAIRPERSON: Yes.

MR LEDWABA: And Roman figure 3 would be the Murder of the
10 Motherwell 4. And the last one, Roman figure 4, was the attempted murder of Reverend Frank Chikane. And Mr Ngcuka then signed this on 24 February 2004.

ADV NALANE: What did you then do? This is the memo?

MR LEDWABA: The memo comes to my office. Obviously through the project management. And we then authorised this as DSO projects. Issued the declarations. And because for every declaration by DSO, the head of operation must designate, meaning appoint and authorise investigators on each of this. And that is what we did. So
20 when they left at that stage, they had four matters that were now properly authorised in context of DSO. And they were supposed to proceed with these matters with the investigators under the, within the DSO confines.

ADV NALANE:

It is a matter of record that the attempted murder of Reverend Frank Chikane matter was finalised in court ultimately.

MR LEDWABA: I followed that through the press, yes. I am aware of that. But only later.

MR LEDWABA: Only later?

MR LEDWABA: Only way later.

ADV NALANE: What do you mean only way later?

MR LEDWABA: This was authorised to them in 2004. So from February 2004, they were then tasked to proceed. And I just can't remember when it was finalised in court, but not close to 2004.

ADV NALANE: And what about the other three? PEBCO 3, Brian
10 Nxulunga, Motherwell 4?

MR LEDWABA: To my best understanding, these were also recently, only attended to recently. Not in 2004, 2005. Even though they were authorised to them then.

ADV NALANE: And you learned this from following the proceedings of the...

MR LEDWABA: Following the proceedings and the testimony, I think, of Advocate Singh and Advocate Mhaga.

ADV NALANE: You have dealt with Paragraph 79. We may then go to 80.

20 MR LEDWABA:

80 In 80, I am saying now that PCLU, being alive and appreciative of how 28(1)(b) should be invoked, as I have been telling them since May the previous year, they formally adopted the same procedure and submitted a further application to the NDPP in terms of 28(1)(b). And I highlight this in Paragraph 81, which is the

submission they made on 26 February 2004, requesting Mr Ngcuka to authorise two further matters in terms of that subsection 28(1)(b).

The directive is filed as Annexure MGL5.

ADV NALANE: This is on page 1482. I think that is it.

MR LEDWABA: Just to correct the page, 1482 was the initial page probably where this was filed in another bundle. But for our part, It is 1746.

ADV NALANE: It should be 1746.

MR LEDWABA: It is there on top, 1746, page 1746.

10 ADV NALANE: Oh, you're right. It appears that it is. Just take the Commission through this.

MR LEDWABA: The memo is issued under the Office of the National Director of Public Prosecution heading. But on the right, it shows that it is from the Priority Crimes Litigation Unit, being Advocate Akerman's unit. And It is addressed to Advocate MG Ledwaba, Head of Operations, being issued from the NDPP. It is dated 26 February 2004, and the reference number of two TRC matters, 25(02) and 18(02) TRC. Heading is a Referral of TRC cases to the DSO in terms of Section 28(1)(b) of Act 32 of 1998.

20 Mr Ngcuka says:

"I have decided to refer the following matter to the DSO for investigation in terms of section 28(1)(b) of Act 32 of 1998. Crimes of Murder, Attempted Murder and Conspiracy or Incitement to Commit Murder committed in an organised fashion by

Letlapa Mphahlele, with reference to the APLA attacks on the St James Church and Heidelberg Tavern situated in Cape Town.”

He signs it and titled National Director of Public Prosecution. So I know he signed this on 26 February because it was submitted to our office on the same day.

ADV NALANE: And what did you do with that instruction? Which is 82?

MR LEDWABA:

10 82 The legislation says I shall. I have no discretion once it comes under that sanction. I complied with the instruction of Mr Ngcuka and I authorised the two matters as properly DSO projects and DSO investigators were then assigned to assist in these matters.

ADV NALANE: And then paragraph 83, what do you say there?

MR LEDWABA:

83 I said it is inexplicable and confounding to me why the PSCLU, now being aware that they have a tool, 28(1)(b), which they have been refusing to follow, only resorted and used it only on the six matters, the four on 24 February and the two on 26 February, leaving
20 out the rest of possibly ripe matters that they could have similarly approached Mr Ngcuka. He would have authorised them under 28(1)(b) and I would have been obligated to authorise them as DSO investigators.

ADV NALANE: And then paragraph 84?

MR LEDWABA:

84 Reading from the papers, I noted that Advocate Macadam contends in paragraph 39 of his affidavits that I, as being Ledwaba, failed to respond to Advocate Ackerman's memorandum of 10 November 2003.

ADV NALANE: November.

MR LEDWABA: 10 November 2003, my apology. I disagree with Advocate Macadam's contention. To show that I disagree, I say it is common cause that I engaged with Advocate Ackerman on his memorandum to me on the 10th of November, and Advocate
10 Ackerman, as he confirms our engagement, and states, if I have to quote his word, he says, after he approached me, talking to me, I was unmoved by his plea. So Mr Macadam is probably mistaken.

ADV NALANE: And what was this meeting or the memorandum all about?

MR LEDWABA: That was now the third encounter where they approached the DSO to assist them.

ADV NALANE: To assist about the DSO appointing investigators?

MR LEDWABA: Authorising the TRC projects as DSO projects and assigning, designating and assigning investigators to them.

20 ADV NALANE: Then 86?

MR LEDWABA:

86 I say it is significantly incorrect that I was unmoved and tone deaf to the TRC cases. It is I who advised the two of them, Advocate Ackerman SC and Advocate Macadam since May 2003, to adopt Section 28(1)(b) of the Act and to ensure that DSO

investigators would be appointed and designated to assist them in those matters.

ADV NALANE: And 87?

87 I further note that Macadam states in paragraph 40 of his affidavit that, and I quote him, he says:

“On 8 December 2003, NDPP Ngcuka, acting in terms of Section 28(1)(b), instructed the Ledwaba to have four TRC cases specified and referred to be investigated by the DSO.”

10 I say he is obviously incorrect in this regard because it is clearly incorrect. The NDPP only directed and instructed the DSO, not on 8 December as he claims, but on 24 February first time and again on 24 February. And not on 8 December as he says.

ADV NALANE: And 88 you deal with the six, or you deal with appointment of senior investigators to assist the PCL?

MR LEDWABA:

88 Yes, I think when Advocate Macadam testified, he also mentioned this aspect. That in their quest to investigate TRC cases, PSLU, being him and Advocate Ackerman, approached the NDPP
20 and NPA senior management and made a request that six DSO investigators be seconded to the PCLU unit. I say I am also aware that this request was not acceded to by the National Director, Mr Ngcuka and his team, in particular then being Dr Ramaite and Advocate McCarthy. I am aware of that.

ADV NALANE: As we testified earlier, the PCL was created by

declaration, by proclamation, but they did not have investigators.

MR LEDWABA: Correct.

ADV NALANE: So here it looks like they were asking for investigators to be assigned to them.

MR LEDWABA: Correct. I think that was around just before they approached SAPS in August 2003.

ADV NALANE: And you say that request was not acceded to?

MR LEDWABA: Correct.

ADV NALANE: Yes, you deal with 89, you deal with that issue again?

10 MR LEDWABA:

89 I am simply confirming to the Commission that I can confirm that the overriding factor in refusing this request, they mentioned specifically six, because they know SNPU employed six investigators. So the request was refused because the available capacity of investigators within the DSU. They picked six because SNPU had only had six investigators then.

20 So if these investigators by then were settled with the investigation of the highly complex DSO genuine authorised projects that we identified in that Annexure. So if this request had been acceded to, nobody would have been remaining in the SNPU to deal with those projects and would have had to close the SNPU. So that is essentially why that request was declined.

ADV NALANE: And you say SNPU was dealing with serious cases?

MR LEDWABA: Correct. At national projects, those that we identified as national projects with the aim of quick wins. Those were identified

that they can be finalised quickly and DSO can then celebrate on those successes. The regions had long and complex cases that took some time. That was the main purpose of the SNPU.

ADV NALANE: And then paragraph 90.

MR LEDWABA:

90 The Calata affidavit states that the DSO persisted in its refusal to appoint investigators, as did the SAPS. This is what is in the papers. It is alleged in those papers that according to Macadam, the refusal by the DSO to provide investigators effectively brought an
10 end to the investigation and prosecution of TRC cases.

ADV NALANE: Can I ask your answer to that?

MR LEDWABA:

91 I am simply saying in paragraph 91 that this is an incorrect representation of the context within which the DSO and the PCLU interacted, regarding the investigation and prosecution of TRC cases. I think I have already highlighted what happened in the preceding paragraphs.

91 In 92, I say the DSO authorised, notwithstanding what Mr Macadam says, it is common cause in 92 that the DSO authorised
20 investigation of at least a total of six TRC matters as directed by the National Director in 2004. And this was by their request. So for him to say there was an effective bringing to an end of investigation, I am shocked.

93 In my view, PCLU had no impediments from pursuing any new investigation of TRC-related cases, I meant to say, utilising

Section 28(1)(b), by simply approaching the NDPP. And if you are happy, you would then direct and approve it, instruct the DSO to do and will do like we did with the six.

ADV NALANE: You explain here in 94?

MR LEDWABA:

94 The last application they made, the last application of the PCLU made in 2003 was on 8 December 2003.

ADV NALANE: And if you may pause there, the application was granted.

10 MR LEDWABA: Correct. As we said, under 1745, the memo by the NDPP was authorised. He approved it on 24 February on only four matters that was identified, and he instructed the DSO to further authorise two other matters two days later, 26 February 2004. So in total, they decided to apply for only six, and these were approved.

ADV NALANE: And could they have applied for more?

MR LEDWABA: Nothing stopped them. Well, I cannot really talk on their behalf, but from my perspective, they had at least, according to their audit, more than 40 cases then that were alive. And they decided to focus only on the six, which we now know were only
20 finalised long after. Long, I mean long after 2004.

ADV NALANE: And then, what do you say in 95?

MR LEDWABA:

95 I wish to stress to the Commission that the DSO never stopped or refused to investigate TRC cases. It is clear we handed over, cooperated, and gave them even advice on how best for them

to deal. They disregarded that and only accepted in December when this could have been done as early as May. So to say the DSO stopped or refused is not correct.

ADV NALANE: Before you conclude, there is one matter that I want your views on.

COMMISSIONER KGOMO: Just speak up, Mr Nalane.

ADV NALANE: Before you conclude, I just want to ask one question which you may not be able to comment on, but you will inform us. You mentioned in your affidavit that in 2003, former President Mbeki
10 made a speech in Parliament accepting the final TRC report.
Correct?

MR LEDWABA: Correct.

ADV NALANE: And you were dealing with the DSO, and you also say that at some point, the TRC cases were made public crimes.
Correct?

MR LEDWABA: Correct.

ADV NALANE: And it is known from public records and records of TRC cases, TRC reports, that what was envisaged was that the TRC process had run its course. And so those who did not apply, they
20 applied, and those who were refused amnesty, they were supposed to be pursued by the NPA.

MR LEDWABA: I confirm that.

ADV NALANE: Now, do you, have you any comment about, there is

a lot of people who do not apply for amnesty, and this was what President Mbeki's highlighted in his speech in 2003. There is a huge group of people who do not apply for amnesty. Are you able to comment if any of those who did not apply were pursued, prosecution and investigation-wise?

MR LEDWABA: I am unable to properly answer that, because I only dealt with these matters, and the rest I know there were dockets all over the DPP provincial offices. I think they counted well over 400. As to whether they finally prosecuted them, I cannot say.

10 ADV NALANE: You did the conclusion paragraph 96.

MR LEDWABA: Correct.

ADV NALANE: Just read that into record.

MR LEDWABA: In conclusion Chairperson:

"I deny emphatically that I as Ledwaba or the DSO stopped or interfered with the investigation or prosecution of TRC cases. We offered support from the beginning in May, April, May. We engaged with them. Ultimately we gave them the tools in form of declarations in 2004 for them to proceed."

20 ADV NALANE: Is there anything else that you, I am going to ask you that you wish to bring to attention of the Commission to assist with this mandate?

MR LEDWABA: If I remember Chairperson there was one item which is not here and I thought I should respond to it. When Mr Ngcuka was testified in this proceedings and was cross-examined a memo of Mr

Leask and the remarks of Mr Calata of to say:

"The NPA or the DSO stopped the investigation and this stance was remarkable. Mr Ngcuka seems to have accepted that as a correct situation and he said being shown this memorandum he was not aware of the decision Ledwaba took."

So seemingly he agreed that that memo entailed that the DSO stopped the investigation which is this memo and I am saying he was also without reading the memo not strictly correct. The memo
10 does not in any way say the DSO stopped. He then says to show that he did not agree with this wrong decision he set aside, he reviewed and set aside, if I can use that word, that policy and approved those requests. Strictly speaking he never reviewed the memo of July.

Projects were then handed to him in December and February in terms of the correct legislation and he approved them only instructing them. The two are not related.

ADV NALANE: And so the point I want to emphasise is that he exercised his powers in terms of the applicable section of the legislation.

20 MR LEDWABA: Correct.

ADV NALANE: 28(1)(b).

MR LEDWABA: Without reviewing my so-called earlier decision which is not even in existence.

ADV NALANE: And as you had said, you had advised the PCLU people to use the correct legislation.

MR LEDWABA: At least three times.

ADV NALANE: At least three times.

MR LEDWABA: Which they finally did in December and Mr Ngcuka complied and approved them in February 2004. 24th and 26th February 2004.

ADV NALANE: And he was not reviewing any decision that you had taken?

MR LEDWABA: No. I mean the memos are here. That is sign there is no mention of an earlier decision being reviewed under 1745 and
10 1746. It is straightforward. He is being given six matters to consider. He feels happy that they can be dealt under 28(1)(b) and he directs that they be dealt with accordingly and we authorise the projects.

ADV NALANE: Chair, that is all the questions for the witness.

CHAIRPERSON: Thank you, Mr Nalane. Let me start with Ms Ntloko.

Any questions for clarification?

ADV NTLOKO: Thank you, Chair. We have a few questions. It is afternoon, Mr Ledwaba.

MR LEDWABA: Afternoon, Council.

20 ADV NTLOKO: Just a few clarification questions. I in this proceeding act for the National Prosecuting Authority. To just put your mind at ease if that helps at all.

COMMISSIONER KGOMO: Do not swallow your words.

ADV NTLOKO: I am trying to find the document where I put these so I did not want that on the record. If we can just go to your statement

at paragraph 92. There you indicate that:

"The DSO authorised the investigation of six TRC matters as directed by the NDPP in 2004."

Can you then confirm for us if the DSO did in fact conduct those investigations?

MR LEDWABA: The overall management of the project still remained with Mr Ackerman and Mr Macadam. The DSO investigators, Mr Leask is here, from this unit were then assigned and designated on each of those four. As to whether Mr Macadam and Mr Ackerman did
10 follow up and did the investigation was no longer my baby and I do not know.

ADV NTLOKO: Thank you, we will follow up with him. And then in paragraph 93 you state that:

"In your view the PCLU had no impediments from pursuing any investigation utilising Section 28(1)(b) processes by applying to the NDPP."

MR LEDWABA: I confirm that.

ADV NTLOKO: Can you just, on that very, on those very paragraphs, and you say the same thing in fact with paragraph 61. Can you
20 explain the distinction between Section 21A and Section 21(b) as you understood it at the time and how they operate?

MR LEDWABA: I think in paragraph 36 and 37 we show that firstly under 28(1)(a):

"The Head of Operation is limited to specified offences under that section. There is discretion to authorise or

decline a project."

And if we go back, define what is specified offence in paragraph 36, which is defined under 7(a):

"As relating to serious high profile or complex corruption cases, high profile or complex commercial cases or financial crimes."

And the third one being:

"High profile and complex organised crime cases."

And the last one being:

10 "Racketeering and poker prevention of organised."

So those four, once they are brought to the Investigating Director through the intake criteria, you can then authorise them or decline them as the Head of Operation as DSO projects automatically designating investigators to them. The DSO in terms of investigators did not operate like SAPS, South African Police. On each project, it is not like DSO investigators can just come in and assist. There had to be a special designation in terms of the legislation to identify that under project A, Mr Nel and this, sorry, the Head of Gauteng and this investigators identified and this prosecutor will deal with this one.

20 Otherwise, he would not or she would not have powers under the NPA Act.

28(1)(b) it is read on page 1706, and I think we have read that. It says:

"If the National Director refers a matter in relation to alleged commission of specified offence to the

Investigating Director, the Investigating Director shall conduct an investigation or a PI as referred to in subsection 13 on the matter."

So to my understanding and those that I worked with at the time, the mandate covers the four legs. However, the National Director is given super powers in terms of that subsection to go beyond the mandate of the DSO. But even then, he must specify what type of offences he is now forcing the DSO to do because it says, "Shall". And if we read his declaration under 1745 and 1746, he
10 mentioned what type of specified offence. The Roman figure one under 1745, he says:

"Kidnapping, assault, and murder."

So that is the specified offence he mentions. The second one, he says:

"Murder or attempted murder of Reverend Chikane."

That is the difference. So without him authorising or issuing a directive under 28(1)(b), those matters that do not fall within the co-mandate of the DSO would never have been authorised. Otherwise, the people could have challenged that authorisation in court and the
20 whole authorisation might have been declared unlawful and wasted DSO time.

ADV NTLOKO: And then just to deal with the advice that you indicate in various places in your affidavit between May and November 2003 that you gave to Ackerman SC and Macadam. Did your position on this advice ever change?

MR LEDWABA: Never. We know finally it was accepted and six matters were done according to that advice.

ADV NTLOKO: And then in your affidavit, you indicate that Ackerman SC and Macadam had a difficulty accepting that you are now their senior. Was this a recurring occurrence or was it a once-off issue in relation to this particular aspect where you had informed them to make an application to the NDPP?

MR LEDWABA: I think in terms of relationship, once I was promoted to this level, most of my then senior were not happy. And there was
10 this friction and when they had to deal directly with me now as their boss, it became apparent that there was this friction that they were unable to comprehend or accept that now I am their boss. And I am even giving them advice which they thought it was incorrect.

ADV NTLOKO: And then just on that advice, was there ever a time where you thought that maybe they might have misinterpreted your advice or they did not understand the advice that you were giving?

MR LEDWABA: No. Even in the last meeting in November, I told them that I am now tired. I cannot explain the same thing to you people. And I think we left on not such good terms then.

20 ADV NTLOKO: And then one last question. In paragraph 83 of your affidavit, you indicate:

"It is inexplicable and confounding to me why the PCLU only utilised the Section 28(1)(b) process only in respect of six matters, leaving out the rest of possibly ripe matters that could have been similarly authorised by the

NDPP."

Sorry to say that is the last question. In fact, there is two questions under that. What other possibly ripe matters were there in your understanding at the time, apart from the six?

MR LEDWABA: Firstly, if you look at the annexure MGL 1 on page 1723, they inherited at least 14 matters and they identified them. The first one, I do not have to read them, the Commission sources. But all the 14 include the six that they ultimately applied. All the six have been investigators. Already being investigated in the DSO by Mr
10 Macadam Mr Leask and them. And they inherited them. At least they had 14 ripe matters, but I know they had 44 matters at their disposal on their own audit then. But they picked only the six and nobody can explain why. That is all I am saying in that paragraph.

ADV NTLOKO: And then, truly, the last question. When you refer to the PCLU, are you referring to the unit as a whole, or are you referring, and this is in paragraph 83 and other paragraphs where you say:

"I gave advice to the PCLU, I do not understand why the PCLU did not do a particular thing."

20 Are you referring to the unit, or are you referring to specific individuals in the unit?

MR LEDWABA: I think that I am referring to the individuals that I interacted with, mainly being Mr Macadam or Advocate Macadam, Advocate Ackerman, and I think in 2008, 2003, there were only three or four in that unit. Advocate Tory Pretorius joined them later.

Advocate Sean Abrahams joined them later, and I think one or two. But they were not really role players in my interaction with the PCLU, only the two. Dr Tory Pretorius, I think I engaged him only once, but not in relation to the three encounters I am referring to.

ADV NTLOKO: Thank you. That would be all our questions.

CHAIRPERSON: Thank you, Ms Ntloko. Ms Nthabeleni.

ADV NTHABELENI: Thank you, Chair. I have no clarification questions.

CHAIRPERSON: Thank you. Ms Moroka?

10 ADV MOROKA: No questions for clarification, Chair.

CHAIRPERSON: Ms Rantho?

ADV RANTHO: Good morning, Commissioners. I do have a few questions. There is always an issue, Chairperson, with my mic.

COMMISSIONER KGOMO: You are talking to yourself.

ADV RANTHO: My sincere apologies, Commissioners. This is really never intentional. There is always an issue with my mic every time I have to address the Commissioners. Good afternoon, Mr Ledwaba.

MR LEDWABA: Good afternoon, Councillor Rantho.

20 ADV RANTHO: My questions are directed at your testimony so far as the SAPS has consented. I represent the South African Police Service.

COMMISSIONER GABRIEL: Ms Rantho, it is very hard to hear you.

CHAIRPERSON: Please repeat yourself.

ADV RANTHO: I simply wanted to inform Mr Ledwaba that my questions would be in relation to the SAPS, which is the client I

represent in this Commission, Mr Ledwaba. Firstly, in your testimony, you spoke of the turf that you found taking place when you took over as the head of the DSO. Remember that between the SAPS and... (intervenes)

COMMISSIONER KGOMO: Turf or what?

ADV RANTHO: Whatever they called, there were issues. Thank you, Commissioner Kgomo. And your evidence before the Commission is that at some point you had to come up with a service level agreement.

10 MR LEDWABA: Correct.

ADV RANTHO: And that was intended to regulate or define or demarcate exactly as to those cases that would be investigated by the SAPS and those that would be investigated by the DSO, right?

MR LEDWABA: As per their respective mandates, correct.

ADV RANTHO: And then just for my own understanding, the service level agreement, SLA, only related to those cases that were not TRC cases, is it not?

MR LEDWABA: Ja.

ADV RANTHO: In other words, it was unrelated to that.

20 MR LEDWABA: TRC were not mentioned or included in those discussions at that time or included in the SLAs that we entered into.

ADV RANTHO: And from your knowledge and your engagement as part of the NP management as you testified, was there ever any SLA in that regard in so far as that which the SAPS had to do and the PCLU in so far as the TRC cases were concerned?

MR LEDWABA: I really stayed far away from the TRC because of our relationship and I do not want to even comment on what they did.

ADV RANTHO: But at some point, you did investigate the TRC related matters, remember? The ones that were directed in terms of Section 28(1)(b).

MR LEDWABA: Only in 2004 and the six matters.

ADV RANTHO: Ja.

MR LEDWABA: Correct.

ADV RANTHO: Yes, yes. But I wanted to understand if you were
10 aware if there was any SLA that was in existence.

MR LEDWABA: In my time until I left, no, I am not aware.

ADV RANTHO: You also testified that in so far as you remember or you knew, all TRC cases were investigated, were at all times investigated by the SAPS. Remember your testimony in that regard?

MR LEDWABA: No, I am not saying I was aware. I am saying the understanding was that TRC, from the speech of Mr Mbeki, that the prosecution would be NPA and investigation would be SAPS. That is what I am saying was my understanding and the NPA understanding.

ADV RANTHO: It was your understanding.

20 MR LEDWABA: Correct.

ADV RANTHO: If maybe so, I need clarity in relation to the memo that you addressed to Advocate Leask. I think it is MGL 5 or 2.

MR LEDWABA: Two.

ADV RANTHO: It is two.

MR LEDWABA: MGL 2.

ADV RANTHO: Yes. Paragraph one of the memo, specifically where you say:

"The need arose that the mandate of the DSO be redefined."

If I may, perhaps, my sincere apologies Commissioner. I just want to go specifically to MGL2. Thank you, Commissioners. If I may assist Mr Ledwaba it is a memorandum dated 15 July 2003 and specifically, yes, it spoke to SNPU. I think that is where my confusion was coming from. Paragraph one says:

10 "Due to the recent creation of the PCLU, it has become necessary to redefine the mandate and operations of the SNPU as follows."

Well, Roman figure 1 specifically, you deal with the TRC cases.

MR LEDWABA: I confirm.

ADV RANTHO: Yes, and you specifically state that:

"You have decided that the SAPS must take over investigations of all such cases."

Do you remember that?

20 MR LEDWABA: I am reading it. Yes, I remember.

ADV RANTHO: Now, I am trying to understand if it is so in your evidence that all TRC cases have always been investigated by the SAPS, why would there be a need for such a decision, in a way, if it was so that, from what you knew, all TRC investigations were conducted by the SAPS?

MR LEDWABA: When I took over as the Head of Operations, there were these 14 cases that came along SNPU from Mr Ngcuka's office and were located in the DSO. Without being strictly speaking within the mandate. I think on the 14th of May, Mr Ngcuka decides that all TRC cases, now, whether they are in the DSO or in the provincial office, fall within the PCLU. The PCLU has an investigative and prosecutorial mandate, but no investigators. I am saying the understanding even then was that the constitutional mandate of normal murder cases, robbery and kidnapping would be SAPS.

10 And I think Mr Ngcuka, when he testified that there was no need for him to approach the President, because it was also his understanding that SAPS would do the investigations. So it is not only mine, but when I wrote this paragraph, it was just to formally record, for purposes of records, to Mr Leask and SNPU, that officially now, DSO is no longer going to be involved. We are transferring the TRC cases to the PCLU, which will then run with SAPS, like all other PCLU cases. That is all that it entails.

ADV RANTHO: Now, what is stated in paragraph 45 of your affidavit, in so far as the decision to refer to SAPS, our investigations for the
20 SAPS. Paragraph 45, where you say:

"It was, however, the understanding is discussed in the NPA EXCO-management meetings, where Dr Ramaite was in attendance, that investigation of the PCLU case would be done by SAPS."

MR LEDWABA: Correct.

ADV RANTHO: And that was preceded by your statement that PCLU was clothed with both investigative and prosecutorial powers, remember that?

MR LEDWABA: Correct. That is what the proclamation says. They are now created. Only prosecutors are assigned to the PCLU and no investigators.

ADV RANTHO: And that is what I am trying to understand, if they were both clothed with powers to investigate and prosecute. And I am trying to juxtapose that with what you said earlier:

10 "That the SAPS were the only ones that were
 investigating the TRC cases."

 And I am trying to understand, PCLU, investigation of TRC, where did it start, where did it stop? And SAPS, where did it start, where did it stop?

MR LEDWABA: To the best of my understanding, the PCLU was formed or proclaimed on 23 March 2003. With specific identified mandate. And I list them in 43. In May, Mr Ngcuka, in conjunction with NPA, decided to elevate TRC cases and identify them as priority crimes, so that he can then take them and put them within the
20 proclamation of the PCLU. And from that day, they were all proclaimed as PCLU cases, who, according to the proclamation, they have both investigative and prosecutorial powers. But the reality is they do not have investigators appointed or even seconded to them. So there was a lacuna somewhere in terms of that placing of investigators in that legislation, without identifying or appointing

specific investigators.

ADV RANTHO: Okay, but you were aware of TRC cases being investigated by SAPS, as you said.

MR LEDWABA: Correct.

ADV RANTHO: And do you know who was overseeing the investigations?

MR LEDWABA: I do not.

ADV RANTHO: Was it someone from SAPS?

MR LEDWABA: Together with the DPPs, all the dockets that are
10 managed by the DPPs were investigated by SAPS. As to whether they were all allocated under one Division, I would not know.

ADV RANTHO: But now, investigative powers of the PCLU, I am just a little bit confused. That the PCLU had powers to investigate, and I am trying to understand what investigations would that be. Or what those powers, what did they entail?

MR LEDWABA: In 43, we quoted what that proclamation says. It is not my making. The proclamation itself says:

"They were mandated to."

And it is highlighted:

20 "To direct investigations and prosecution."

That is all it says.

ADV RANTHO: Okay.

MR LEDWABA: So prosecutors in the NPA deal with prosecutors, and SAPS deal with investigation. That was the norm, and is still the norm.

ADV RANTHO: And the PCLU at that time, in particular Advocate Macadam, what was his role during these investigations then?

MR LEDWABA: You must cut off his position from May, when he was transferred from DSO to PCLU. So when he was in the DSO prior to this policy, he worked with TRC matters under the [indistinct] of DSO with DSO investigators. Once the policy kicked in, cases were transferred. He does not have powers under the NPA Act. But he can only work in terms of the proclamation where TRC matters now duly fall.

10 ADV RANTHO: And he reported to you prior to that?

MR LEDWABA: Yes.

ADV RANTHO: Prior to May 2003, is it not?

MR LEDWABA: Correct. At the time when he was in the SNPU, DSO, him, Mr Leask, and Mr Tungwane reported to me. And he took a decision that he is transferring from the DSO, after talking to Mr Ngcuka and move to the new big unit of the PCLU. And from then on, I think he reported to Ackerman, Advocate Ackerman, who reported to Dr Ramaite.

ADV RANTHO: And you cannot tell how he collaborated with the
20 SAPS in so far as the investigations and the prosecution is concerned?

MR LEDWABA: I cannot.

ADV RANTHO: Okay, thank you. In your evidence, still in the paragraphs from 43 up to, say, paragraph 45, where you spoke of the understanding of the EXCO in so far as the SAPS was concerned,

specifically in paragraph 44 of your affidavit, you do indicate that, or rather you state that:

"There was a challenge that no specific investigators were employed or assigned to the PCLU from its inception."

Remember that?

MR LEDWABA: That is the lacuna I am referring to.

ADV RANTHO: And then you go to 45, that then your understanding is discussed in the NP EXCO Management were that, where Dr
10 Ramaite was present. And the understanding was that such cases, or PCLU cases, would be done by the SAPS.

MR LEDWABA: I confirm that.

ADV RANTHO: So that is PCLU cases, but they are done by the SAPS. But be that as it may. My question then in relation to that is that, from your evidence, it would appear as though the issue of saying that, or the EXCO Management understanding or decision was intended to cure the lack of capacitation towards the PCLU, is it not?

In other words, the PCLU was established in terms of the proclamation. Unfortunately there were no investigators on the...
20 (intervenes)

COMMISSIONER KGOMO: Are you putting into him, or do you want to clarify?

ADV RANTHO: I am repeating what he said, Commissioner Kgomo. It is simply what the witness said. In paragraph 44.

COMMISSIONER KGOMO: What do you want to clarify?

ADV RANTHO: What I am trying to get as clarified Commissioner Kgomo, is now, in so far as the PCLU was not properly capacitated, or was not at all, because the witness says from its inception, there were no investigators assigned to that. And my question now, for clarity, because the witness then proceeds to inform the Commission that in the NP EXCO meeting, a decision, or the understanding, whether it was a decision or understanding, but some sort of a decision, or an understanding, became that the SAPS would then have to deal with the PCLU cases.

10 So my question, I am saying based on his evidence, I am trying to find out from the witness, as to that whole thing, or paragraph 45, or the EXCO decision that SAPS would take over, was intended to cure that which he pointed out in paragraph 44, which is the fact that there were no investigators assigned. In other words, during the meeting, from the evidence, I am trying to check with the witness if my understanding is correct.

 Because if I follow his testimony, or his evidence, is that from inception, PCLU was never assigned any investigators. Then the witness says, "At some point, EXCO Management then said, such
20 investigation could be done by the SAPS". And my question was, this was done to cure that which was a problem created by lack of assignment of investigators to the PCLU.

COMMISSIONER KGOMO: Yes. Mr Ledwaba, you follow that?

MR LEDWABA: I do follow, Commissioner.

COMMISSIONER KGOMO: Yes. Deal with it.

MR LEDWABA: My answer is, I am saying it is the NPA EXCO Management's position or understanding. Simply by reading the core mandate of prosecutors is to prosecute, the core mandate of police SAPS is to investigate. And that is the idea how the TRC cases were to be handled, and that is probably why Mr Ngcuka decided to move them out of the DSO, who were investigating these cases, and allocate them to a new unit that will focus on them, who were already dealing with matters within the PCLU context with SAPS. It follows that SAPS will then be on their constitutional mandate to carry the

10 rest of the investigation in support of PCLU. It might have been not identified in the proclamation, but it was common cause. Prosecutors prosecute NPA, SAPS investigates dockets.

ADV RANTHO: Okay. Perhaps just a follow-up on what Mr Ledwaba said. The common understanding from the proclamation, the proclamation was clear that the NPA would be the one to carry out that responsibility. I think it is common cause, as you also said. But then the decision of the EXCO, NPA EXCO Management, I am trying to understand. Because it would appear as though there was a common understanding among the NPA officials that the SAPS would

20 have to carry or execute that task of investigation? But the question now becomes, was this communicated to the SAPS? In other words, I am trying to understand, this understanding, was it common between NPA and SAPS? Was it ever communicated, or was it in consultation of some sort? Just to understand if you were on the same page with the SAPS in so far as that is concerned.

MR LEDWABA: To my best understanding, it was common cause. PCLU is mandated first in the proclamation on those identified cases of theirs. Before we peg in TRC. And we have shown in those few paragraphs that those cases that they [indistinct] terrorism, international crimes, cannot remember the rest, nuclear stuff, were investigated by SAPS and prosecuted by PCLU. So it was a common understanding. The fact that TRC cases now come to PCLU cannot change that situation. SAPS must just continue with them as they have been doing with PCLU. That is why I am saying it is a common

10 understanding.

ADV RANTHO: But my question was, that common understanding prevailed within the NPA only, or was that a common understanding with SAPS as well?

MR LEDWABA: I cannot answer that.

ADV RANTHO: Okay. And then also, you spoke of a request made by Advocate Macadam for the DSO to appoint investigators, I think. And Ms Ntloko referred to a number of paragraphs, but there is also one specifically in paragraph 61 of your affidavit. And I just want to clarify if my understanding is correct that requests or applications that

20 were made by PCLU for you to appoint investigators within the DSO was also intended to cure the issue of lack of appointments of investigators attached to the PCLU from inception, as you stated earlier. So in other words, these requests were also intended to deal with, and I do not want to say it was a failure by the NPA to capacitate PCLU, but in your statement you said, "From inception, no

investigators were ever assigned to that". And I am trying to understand your understanding if the request by Advocate Macadam was also intended to cure or deal with that issue or the problem that was created by lack of appointment of investigators to the PCLU.

MR LEDWABA: I do not want to speculate on Mr Macadam's part Council, Commissioner.

ADV RANTHO: Well, maybe then to move away from Mr Macadam, in what you said earlier to Ms Ntloko or in response to Ms Ntloko's questions, was the issue of you urging them or encouraging them to
10 make use of Section 28(1)(b), remember? In other words, you would say, I would assist subject to you giving proper directive issued by the NDPP.

MR LEDWABA: That was the law.

ADV RANTHO: [Indistinct].

MR LEDWABA: That was the law.

ADV RANTHO: Well, it may well be but I am trying to understand that also was intended to assist with that lack of capacity that you said was never, I mean, has always been a problem from inception. In other words, it was also one of the methods that from your side you
20 were using to say, because there were no investigators from inception assigned to PCLU, if you want me to assist, then let there be a proper directive issued in terms of Section 28(1)(b). Is that my understanding that, that is what was intended with you requesting that there must be a directive?

CHAIRPERSON: Yes or no, Mr Ledwaba?

MR LEDWABA: No.

ADV RANTHO: And then you also spoke of the decision, the same decision that is recorded in the MGL2. And I simply need clarity in terms of what you stated that:

"I have decided."

And I wanted to understand in terms of what you decided, where did you derive such powers to decide that those be transferred to the SAPS? And perhaps if I have to qualify why I am asking that question, I am asking it in light of the directives that were issued prior
10 to that by the NDPP, Advocate Ngcuka. I think it must have been the one dated December, but I think he signed on the 24th of February, and then there was another one that was on the 26th of February 2004, where he directed that certain cases be investigated by the DSO.

Now going back to what I was asking you is that when you then came with the memo MGL2, to say "I have decided" and I am trying to understand in terms of what powers, and did you decide that those cases would have to be referred to the SAPS?

MR LEDWABA: If I heard correctly, Chairperson, Council is saying
20 Mr Ngcuka's directive was issued prior to this memo. That is definitely not correct. The memo is in July 2003, and Mr Ngcuka comes later in 2004.

The power that, if I may answer a direct question, is I am saying in April, May of 2003, Mr Ngcuka and EXCO, came from him and EXCO, take a decision which becomes a policy that TRC cases, wherever

they are located, must now fall under PCLU. All I am simply doing is, even though I used the word I, but it was in my official capacity. I am implementing that policy, transferring in line with that policy TRC cases from DSO to PCLU. Later in 2004, Mr Ngcuka did approve under 28(1)(b).

ADV RANTHO: Okay. In a way, I think, yes, I may have missed the dates, I think I did the other way around, but the Calata Group is one of their complaints that this went to that decision that they do refer to you saying that cases be referred to the SAPS. But nonetheless,
10 SAPS refused to take over in a way, and that is why my question was. I intended to find out as to whether you had the relevant powers to instruct as such, but I think you have since addressed my concern in relation to what was subsequently developed.

And then, sorry, Commissioners, I am almost on just one last more question. Paragraph 90 of your affidavit, Mr Ledwaba. Nine, zero. That is where you informed the Commission, you referred to the Calata affidavit where it stated that:

"The DSO persisted in its refusal to appoint
investigators as did the SAPS."

20 Now, what seems to be at play, and I am trying to get your understanding, if it is also your understanding, at paragraph 90, there are two issues at play according to the Calata Group. One being SAPS refusal to investigate, and secondly, the DSO's refusal to appoint investigators. Would you agree? I do not know. I think it is that you understand, too? In terms of what you referred to them,

there are two issues at play there. In terms of what the Calata's are saying, they say, "DSO persisted in its refusal to appoint investigators as did the SAPS".

MR LEDWABA: I gather that is their view, yes.

ADV RANTHO: Yes. Now, from your evidence, I am trying to get clarity, because I am also now trying to understand from what you testified in response to what the Calata Group are saying. So in your evidence, I understand to say there are two issues that were at play. You did speak to the letter of Commissioner de Beer, although you
10 did not really get into detail, but you recall referring to the letter of Commissioner de Beer, who said:

"The SAPS would not be inclined to take over or investigate unless the President clarified the role."

Do you remember that memo, or the letter of General de Beer?

MR LEDWABA: I do.

ADV RANTHO: Yes. So I am trying to understand that from your evidence that there are two issues at play here in response to what the Calata's are doing. There is an issue of the letter or reluctance,
20 or perceived reluctance on the part of SAPS, subject to, of course, clarification, because the letter of General de Beer makes it clear that there is no unwillingness, but subject to the President clarifying that it must be them, not the NPA.

And then secondly, yours specifically, also from your evidence, I am trying to understand if I am correct that the DSO's

reluctance to act was not necessarily an issue of any influence, but rather the issue of you persisting that you would assist, provided that there was a proper directive issued in terms of Section 28(1)(b) of the NPA.

MR LEDWABA: Correct. We never refused to appoint investigators if it was done according to the right procedure and which was then later done.

ADV RANTHO: Meaning, whether it is SAPS, and I know that, I am mindful of the fact that you were not the author of General de Beer's
10 Commissioner de Beer's letter, but you were aware of it. That the two issues from your evidence were not related to any political interference.

MR LEDWABA: I became aware of Mr de Beer's letter through this Commission.

ADV RANTHO: Yes, what I am saying is that either it is a lack of assistance or perceived lack of willingness to assist, either by the SAPS or the DSO. It had nothing to do with politics, but it was informed by SAPS talking to the proclamation that they said, it said "NPA", and then also DSO saying, "No, we can do it, but only in so far
20 as the directive was properly issued by the NDPP, Section 28(1)(b)".

MR LEDWABA: It would be fair, Commissioner, to confine myself to DSO, and I can say yes.

ADV RANTHO: I accept that, yes.

CHAIRPERSON: Ms Rantho, I was made to understand that was your last question.

ADV RANTHO: Well, under that pressure, Chairperson, I suppose, I tried to run through some of the things, I thought Ms Ntloko dealt with them, that is why I was avoiding to deal with them, but be it as may. I see that the Chairperson is really pushing me to say that I am done.

CHAIRPERSON: Yes.

ADV RANTHO: But under those circumstances, I will end it there. Thank you so much, Commissioner.

CHAIRPERSON: Thank you. Thank you, Ms Rantho. I think this will be an appropriate time to adjourn for lunch and to convene at 14:05.

10 INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Nel, any clarificatory questions?

ADV NEL: Indeed. They will help me now. They just asked that I move that, so it is recorded. Mr Ledwaba, perhaps we should start with informing the Commissioners during your time as the Head of Operations of the DSO, who was the regional head of Gauteng office?

MR LEDWABA: Commissioner and Chairperson, unfortunately... (intervenes)

20 CHAIRPERSON: Speak closer to the mic Mr Ledwaba.

MR LEDWABA: Unfortunately, it was Mr Nel, the same person who is asking me now.

ADV NEL: Now, Mr Ledwaba... (intervenes)

CHAIRPERSON: He wants to put himself on record.

ADV NEL: It is more than an apology. Mr Ledwaba, your lines of

reporting, I understand your lines of reporting during that time to be, you were the Investigating Director, Head of Operations, and you reported to the Head of the DSO, Mr McCarthy.

MR LEDWABA: That is correct.

ADV NEL: Mr McCarthy was the Head of the DSO and also a Deputy National Director of Public Prosecution. Is that correct?

MR LEDWABA: That is correct.

ADV NEL: He then in turn reported directly to the National Director of Public Prosecution, Mr Ngcuka.

10 MR LEDWABA: That is correct.

ADV NEL: Now, the one aspect. I have got five aspects to deal with. The first aspect is perhaps CICU. Now, CICU was discussed in a commission in April 2005. CICU is the Crime Information Collection Unit. Is that correct?

MR LEDWABA: That was my understanding. It was sort of a misnomer, but we referred to it as Crime Information Collecting Unit. And some people referred it, I do not know what, to Crimes Intelligence Collection Unit. But the official name was Crimes Information Collecting Unit.

20 ADV NEL: Good. That is the one clarification issue. Then, in terms of the memorandum to Mr Leask, who was referred to as Advocate Leask, and I never viewed that as a compliment. But in terms of that memorandum of 2003, you drafted the memorandum in terms of a policy adopted in line with the PCLU proclamation. Is that correct?

MR LEDWABA: Correct.

ADV NEL: So you followed the policy?

MR LEDWABA: Correct.

ADV NEL: Now, this memorandum, for lack of a better description, caused some friction within the NPA between the PCLU and the DSO. That is how Mr McAdam, Mr Ackerman, and yourself. Some friction was caused. Is that correct?

MR LEDWABA: I would not define it to this memorandum.

ADV NEL: Good. But if you were wrong with your memorandum of, is it March 2003 or July 2003?

10 MR LEDWABA: 15 July 2003.

ADV NEL: If you were wrong with your instruction in your memorandum of 2003, that would mean that you misapplied a policy. Am I correct?

MR LEDWABA: That is correct.

ADV NEL: And that would have caused your superiors to act. Is that correct?

MR LEDWABA: Immediately correct.

ADV NEL: Now, did any of your superiors, Mr McCarthy or Mr Ngcuka, ever call you in, reprimanded you, or dealt with this?

20 MR LEDWABA: Never.

ADV NEL: Now, issue number two. When you advised Mr McAdam to follow the process prescribed in terms of Section 28(1)(b), although he thought you were wrong, do you know if he ever discussed it with your superiors?

MR LEDWABA: I know he discussed it at one stage with Advocate

McCarthy, who also supported my stance.

ADV NEL: Yes. So, although let us say he discussed it with your superiors, your superiors never reprimanded you for following the wrong process.

MR LEDWABA: Correct.

ADV NEL: Good.

MR LEDWABA: Or never even alluded that it was a correct process.

ADV NEL: Good. Then, issue number three. An application in terms of Section 28(1)(a), that was within the discretion of the Head of
10 Operations, and that was you at the time.

MR LEDWABA: I confirm.

ADV NEL: But it is not an unfettered discretion.

MR LEDWABA: No, it is not.

ADV NEL: You could only issue a 28(1)(a) certificate if it fell within that four prescribed crime types, am I correct?

MR LEDWABA: I, correct.

ADV NEL: Good. Now, the TRC matters broadly would not have qualified as for the intake criteria of matters in the DSO, am I correct?

MR LEDWABA: You are correct, I confirm.

20 ADV NEL: So, if you authorised a matter in terms of 28(1)(a), that would have been illegal.

MR LEDWABA: Not only that now, there have been also probably taken to a disciplinary steps against me.

ADV NEL: So, it is not a fact that you were unwilling, but you were unable to authorise any of these investigations in terms of 28(1)(a).

MR LEDWABA: 1a, yes, I agree.

ADV NEL: Good. Then, also, in terms of 28(1)(a), any investigation authorised in terms of 28(1)(a), the Head of Operations will remain in control of that.

MR LEDWABA: I confirm. As the authoriser, it remains my responsibility as all investigators and prosecutors were reporting to me, and I am the lead investigator and lead prosecutor.

ADV NEL: So, also, you would have had to designate specific investigators and prosecutors to deal with a specific investigation.

10 MR LEDWABA: That is how it operated.

ADV NEL: And you were able to designate DSO investigators and prosecutors to deal with DSO investigations.

MR LEDWABA: Indeed.

ADV NEL: In terms of 28(1)(a).

MR LEDWABA: I confirm.

ADV NEL: Good. Now, in terms of 28(1)(b), you obliged to, because you were, for lack of a better word, instructed by the National Director to declare an investigation in terms of 28(1)(b).

MR LEDWABA: I confirm. I had no choice.

20 ADV NEL: Can I just ask you, Mr Ledwaba, was there a duty to report on those investigations that you authorised in terms of 28(1)(b)? Was there a duty to report to you about progress in those investigations?

MR LEDWABA: It was informal. Although it was authorised, it remained the baby of the National Director, because that was his

project, sort of to say. But because it is a DSO project in the DSO project management, we will follow on the progress, but they were not obliged really to come and report to me.

ADV NEL: But did you receive any formal report about progress in any of those six investigations that you declared?

MR LEDWABA: None whatsoever.

ADV NEL: Then, perhaps it is important to explain why a declaration of an investigation and designation of investigators was necessary. So, the investigators that worked for the DSO, they had no police
10 powers, am I correct?

MR LEDWABA: That is correct, Commissioner.

ADV NEL: For them to have any powers of investigation and to collect evidence, they needed to be designated on an investigation?

MR LEDWABA: Specifically on each investigation identified investigators in terms of Section 28.

ADV NEL: So, that also means that only designated investigators could lawfully take part in an investigation of that particular investigation?

MR LEDWABA: I confirm that, Commissioner.

20 ADV NEL: So, the necessity to declare an investigation is to provide policing powers for the investigators to collate evidence?

MR LEDWABA: And the prosecutors, correct.

ADV NEL: Madam Chair, I said I have got five issues. I have dealt with the five issues.

CHAIRPERSON: Thank you. Thank you, Mr Nel. Mr Varney.

ADV VARNEY: Thank you, Chairperson. Ma'am Chairperson, I will make application to cross-examine Mr Ledwaba.

CHAIRPERSON: Yes, thank you.

COMMISSIONER GABRIEL: Mr Ledwaba, can you help me? You have given us, in paragraph 36 of your affidavit, Section 7 of the NPA Act. You started off by saying in paragraph 35:

"That the position of Head of Operations was introduced into the NPA Act through an amendment of the Act in 2000."

10 And I presume that the Section 7 comes from that 2000 Amendment Act.

MR LEDWABA: It was a struggle when I consulted with the evidence leaders, because when we first looked at the Act, it brings only the current one, which is IDEC. And we traced back and we tried to look for the one that created the scorpions, the original Section 7. And to the best of my memory, we related to that one.

COMMISSIONER GABRIEL: Okay.

MR LEDWABA: I have an old version of that Act, and unfortunately, I did not bring it. Now, when we were doing annexures, we can locate
20 this exact one.

COMMISSIONER GABRIEL: Ja, that is exactly my problem. I cannot locate the Section 7. What the evidence leaders have given us is the actual Amendment Act 61 of 2000, and it is a different Section 7.

MR LEDWABA: I am aware of that.

COMMISSIONER GABRIEL: You are aware of that.

MR LEDWABA: Yes.

COMMISSIONER GABRIEL: So would you be able to give us the version of the Act that you have? It may be a later amendment.

MR LEDWABA: The one that is a copy that I had then, so it does not have this recent amendment. So that one is [indistinct].

COMMISSIONER GABRIEL: So it is a copy you had at the time that you were going through these debates with Advocate McAdam and... (intervenes)

MR LEDWABA: Indeed.

10 COMMISSIONER GABRIEL: Okay, I think it is important for us to see that.

MR LEDWABA: I promise that I will bring it and submit it to the evidence leaders.

COMMISSIONER GABRIEL: Okay, thank you.

MR LEDWABA: But Mr Nel is my witness on this.

COMMISSIONER GABRIEL: Well, if you do not deliver it, then we will hold Mr Nel accountable because it is not in the Amendment Act. Then just Section 28(1)(a) and 28(1)(b), which you very kindly brought to us on paragraph 38 of your affidavit. So as I understood it,
20 advocate, who was it now, Ackermann wanted you to sign certificates in terms of Section 28(1)(b).

MR LEDWABA: The first incident, the first encounter in May and July, they were still using 28(1)(a).

COMMISSIONER GABRIEL: Oh, they... (intervenes)

MR LEDWABA: And I corrected them to say.

COMMISSIONER GABRIEL: Right.

MR LEDWABA: To say this one will never be applicable to you guys.
Rather resort to 28(1)(b).

COMMISSIONER GABRIEL: Okay. So then they wanted you to sign
certificates in terms of Section 28(1)(b).

MR LEDWABA: In November.

COMMISSIONER GABRIEL: In November, which you could not do
because you were not the National Director.

MR LEDWABA: Correct, and I told them, sign it. Then you are
10 instructing me as the NDPP, then I can do, and he could not as they
were not NDPP.

COMMISSIONER GABRIEL: And that is how the National Director
subsequently signed those two certificates that you told us about.

MR LEDWABA: Indeed, Commissioner.

COMMISSIONER GABRIEL: Now, I have just looked at Section
28(1)(a) and 28(1)(b), and please understand this is all new to us.
Both refer to specified offences. So in the one, the Investigating
Director has reason to suspect that a specified offence is committed.
And in the second one, if the National Director refers to a matter also
20 regarding a specified offence. Now, what is the difference? They
relate to precisely the same definition.

MR LEDWABA: I differentiated the two to say that A1 is specifically
specified offence in terms of that mandate of the DSO.

COMMISSIONER GABRIEL: Which is the definition that none of us
can find.

MR LEDWABA: Of the four. Even the new one talks about organised crime of a high-level nature.

COMMISSIONER GABRIEL: You mean the new Act has since been repealed from this?

MR LEDWABA: Yes.

COMMISSIONER GABRIEL: Ja. The Amendment Act does not talk to it, which would have been applicable at that time.

MR LEDWABA: I agree.

COMMISSIONER GABRIEL: Okay. So if both refer to specified
10 offence, I am trying to understand in my mind, what is the difference when the National Director sent you some TRC cases? Why could he you then use, presuming then that he had formed the view that these were specified offences? It is the only way he could have used his power in 28(1)(b).

MR LEDWABA: My understanding was these specified offences had to be identified per referred matter. Like those four he mentions, murder, kidnapping or attempted murder. That was specified. Not as defined in the NPA Act, but in terms of 28(1)(b).

COMMISSIONER GABRIEL: But as defined in the NPA Act, if we go
20 to the amendment that brought this in, a specified offence means any matter falling between 7.1aa or 7.1bb. And in the Amendment Act, "aa" refers to criminal or unlawful activities committed in an organised fashion, or "bb" refers to other offences or categories determined by the President by proclamation in the Gazette.

MR LEDWABA: Which is totally different to our powers then.

COMMISSIONER GABRIEL: Ja, it is totally different.

MR LEDWABA: Yes.

COMMISSIONER GABRIEL: So you see my question is, what is the difference if the National Director had formed the view that these were specified offences as defined. Why then was it not open to you to form the same view that these were specified offences as defined in terms of 28(1)(a)?

MR LEDWABA: My answer again is how we interpreted our mandate in terms of that which is now not here. Limited to high complex
10 financial crimes, high complex corruption, organised crime and racketeering and organised crime. We understood that we were limited only to that in terms of the high end part of those crimes.

COMMISSIONER GABRIEL: Because if you were limited, then the National Director would have been similarly limited.

MR LEDWABA: No 28(1)(b), it gave him superpowers.

COMMISSIONER GABRIEL: But it used the same definition of specified offence.

MR LEDWABA: I always argued that even a theft of Pick and Pay, he
20 it. could have just said, use 28(1)(b), it is a specified offence, go and do

COMMISSIONER GABRIEL: Okay. So it seems to me then that maybe what there ultimately was, was a legal difference, a legislative difference between you and possibly the prosecutors, the PCLU prosecutors.

MR LEDWABA: I would not necessarily agree, Commissioner,

because legislation is clear. Specified offence accommodate under 1a and certain specified offence suddenly under 1b. If it was the same, there was no need for 28(1)(b).

COMMISSIONER GABRIEL: My difficulty is specified offence is defined in the Act and it is not what you have given us.

MR LEDWABA: Correct, in terms of this current Act.

COMMISSIONER GABRIEL: Right, so will you provide us with your copy of the legislation?

MR LEDWABA: I will.

10 COMMISSIONER GABRIEL: Thank you very much.

MR LEDWABA: Thank you.

CHAIRPERSON: Mr Nalane, any re-examination to be conducted on your witness?

ADV NALANE: No re-examination, Commissioner.

CHAIRPERSON: Thank you. Mr Ledwaba, we thank you for having come to give evidence before this Commission. As you have heard, there is an intention to apply for your cross-examination, in which event you will be expected to come back to this Commission for such cross-examination. But for now, you are excused as a witness.

20 MR LEDWABA: Thank you, Commissioner.

ADV NALANE: Chair, that is the end of the business for today.

CHAIRPERSON: Thank you. Are we commencing tomorrow at 09:00? Mr Varney?

ADV VARNEY: I will check with my instructing attorneys on that. Chair, I am told by my instructing attorney that Mr Ackerman has not

indicated, but can I suggest that, just given his situation, that we go for 09:00 tomorrow morning?

CHAIRPERSON: Yes, until 13:00.

ADV VARNEY: As the Commission pleases.

CHAIRPERSON: Thank you. These proceedings are adjourned until tomorrow at 09:00. Thank you.

INQUIRY ADJOURNS UNTIL 23 APRIL 2026

CERTIFICATE OF VERACITY

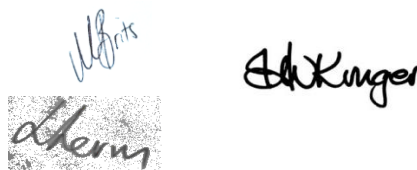
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