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# WEBBER WENTZEL

in alliance with > Linklaters

Attention : Adv Abrahams

Attention: Adv Pretorius SC

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Your reference

Our reference

Date

M Hathorn / M Peters  
3005790

18 January 2018

**CONFIDENTIALITY NOTE:** This letter contains confidential information intended only for the person/s to whom it is addressed. Any other recipient is not entitled to read the rest of this letter or disclose its contents to any person, or take copies, and is requested to notify us immediately by fax, e-mail or telephone at the numbers listed above and we will reimburse the costs of doing so.

Dear Advocates Abrahams and Pretorius

## APARTHEID ERA CASES:

1. STATE v MSEBENZI TIMOTHY RADEBE & 3 ORS, CASE NO.: CC 16/2016
2. INQUEST INTO DEATH OF AHMED ESSOP TIMOL: CASE NO: I01-2017
3. LATE NEIL AGGETT
4. LATE MATTHEWS MABELANE
5. LATE HOOSEN HAFJEJEE
6. LATE SULIMAN BABLA SALOOJEE
7. OTHER UNRESOLVED DEATHS
8. SERIOUS CASES WHERE AMNESTY WAS REFUSED OR NO APPLICATION WAS MADE

1. We seek a meeting with you discuss the abovementioned cases.

### Case 1: Late Nokuthula Simelane

2. In respect of case 1, which deals with the late Nokuthula Simelane, we have received no responses to our letter to Advocates Mathenjwa and Barnard dated 24 October 2016 and our letter to you dated 28 February 2017.

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Senior Partner: JC Els Managing Partner: SJ Hutton Partners: BW Abraham RB Africa NG Alp OA Ampofo-Anti -RL Appelbaum DC Bayman AE Bennett AP Blair DHL Booysen AR Bowley JL Brink S Browne MS Burger RI Carrim T Cassim SJ Chong A Christie KL Collier KM Colman KE Coster K Couzyn JJ Daniels JH Davies PM Daya L de Bruyn PU Dela JHB de Lange DW de Villiers BEC Dickinson MA Diemont DA Dingley G Driver HJ du Preez CP du Toit SK Edmundson AE Esterhuizen HJR Evans AA Felekis GA Fichardt G Fitzmaurice JB Forman C Gabriel CP Gauk Kl Gawith OH Geldenhuys MM Gibson SJ Gilmour H Goolam CI Gouws PD Grealy JM Harvey MH Hathorn JS Henning KR Hillis XNC Hlatshwayo S Hockey CM Holfeld PM Holloway HF Human AV Ismail ME Jarvis CM Jonker S Jooste LA Kahn M Kennedy A Keyser PN Kingston M Kyle J Lamb L Marais S McCafferty MC McIntosh SJ McKenzie M McLaren SJ Meltzer CS Meyer AJ Mills JA Milner D Milo NP Mngomezulu S Mogale M Moloi LE Mostert VM Movshovich RA Nelson BP Ngoepe A Ngubo ZN Ntshona MB Nzimande L Odendaal GJP Olivier N Paige ANT Pardini AS Parry S Patel GR Penfold SE Phajane TC Phala MA Phillips D Ramjettan GI Rapson Z Rawoot K Rew G Richards-Smith NJA Robb DC Rudman S Rugan H Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh J Smit MP Spalding PS Stein MW Straeuli LJ Swaine JM Swanepoel Z Swanepoel A Thakor A Toefy PZ Vanda PP van der Merwe SE van der Meulen CS Vanmali JE Veeran D Venter B Versfeld MG Versfeld TA Versfeld DM Visagie J Watson KL Williams K Wilson RH Wilson M Yudaken Chief Operating Officer: SA Boyd

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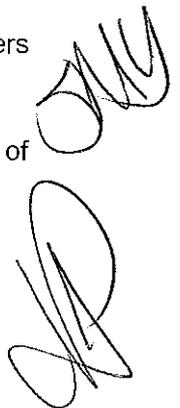
3. In these letters we raised grave concerns about the prosecutorial strategy adopted in this case, which in our view serves to undermine the prospects of a successful prosecution. Indeed we pointed out that our client has lost faith in the ability of this prosecutorial team to conduct a serious and vigorous prosecution. We accordingly seek the appointment of fresh prosecutors to take this matter forward.

Case 2: Late Ahmed Timol

4. Our letter to Adv Pretorius SC dated 25 October 2017 refers. Judge Mothle recommended that criminal charges be pursued against former Sergeant Joao Anastacio Rodrigues, former Warrant Officer Neville Els and former Colonel Seth Sons. We wish to discuss progress in these investigations and the prosecutorial approach to be taken.

Case 3: Late Neil Aggett

5. In case 2, the Neil Aggett matter, we are concerned that to date, no request has been made to the Minister of Justice to seek the reopening of the inquest into Aggett's death.
6. We have engaged in extensive correspondence with you in relation to this matter. In these communications we have pointed out why an early decision is important, including the fact that some witnesses are now elderly and sickly.
7. We have repeatedly pointed out that there is already more than sufficient new evidence to warrant the reopening. Moreover, there would be a time lapse of several months between such decision and the hearing, during which outstanding investigations could be concluded. In particular we refer you to:
  - 7.1 Our presentation provided to you on 19 January 2016;
  - 7.2 Our email dated 21 June 2016 and letter to you dated 8 July 2016;
  - 7.3 Our letter to you dated 23 August 2016;
  - 7.4 Our letter to you dated 21 February 2017.
8. Advocate T Pretorius SC has advised our investigators, Messrs Dutton and Bursik that he may not make available the files of the relevant detainees or SAPS members until the Minister of Justice had agreed to re-open the Inquest. The late delivery of such files in the Timol inquest placed enormous pressure on the legal teams in that matter.
9. We also place on record that our investigators are still waiting for a number of ID numbers of detainees and former SAP members.
10. We accordingly seek a firm date upon which the NDPP will recommend to the Minister of Justice to reopen the Aggett Inquest in terms of s 17A of the Inquest Act 58 of 1959.

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Case 4: Late Matthews Mabelane

11. In this matter the late Matthews Mabelane fell to his death on 15 February 1977 from the tenth floor of John Vorster Square following 23 days of Security Branch detention. The Legal Resources Centre are the attorneys of record in this case.
12. We wish to discuss the progress of investigations in this case and what paperwork has been uncovered so far.

Case 5: Late Hoosen Mia Haffejee

13. In this matter the late Dr Hoosen Haffejee died on 3 August 1977 at the Brighton Police Station in Durban after 1 day of Security Branch detention. According to the police he committed suicide by hanging.
14. We understand that the NPA is seized with this matter and that investigations are proceeding. We would be pleased to hear of the progress in these investigations. We also wish to ensure that the Haffejee family is legally represented.

Case 6: Late Suliman Babla Saloojee

15. The police claim that Babla Saloojee, who died on 9 September 1964, committed suicide by jumping from the 7<sup>th</sup> floor of the Greys Building in Johannesburg following 65 days in detention. Imtiaz Cajee is in touch with the wife of the late Saloojee who has indicated a desire to have the inquest reopened.
16. We wish to enquire whether this matter is on your books, and if so the state of the investigations.

Other cases

17. We would be pleased to hear whether the NPA is seized with any other apartheid-era cases. When we met with Advocate Abrahams after the launch of civil proceedings in the Nokuthula Simelane matter in 2015 he indicated that the NPA was pursuing an additional 10 cases.
18. Mr. Imtiaz Cajee is also in contact with the families of:
  - 18.1 Nicodemus Kgoathe: He died in detention 4 February 1969 after "slipping in the shower" at the Silverton Police Station;
  - 18.2 Solomon Modipane: He was arrested with Kgoathe and died on 28 February 1969 after "slipping on a piece of soap" at the Silverton Police Station;
  - 18.3 Jacob Monnakgotla: He was arrested with the above and died in Pretoria Prison on 10 September 1969, apparently of natural causes.

- 18.4 Dr Albert Luthuli: He died on 21 July 1967 in Groutville, near Durban, after apparently being run over by a train.
19. Other deaths in detention which ought to be followed up include:
- 19.1 Imran Haroon: After being held incommunicado for 123 days by the Security Branch Imam Haron died on 27 September 1969. During an inquest into his death, police claimed that his injuries were from falling down a flight of stairs at the Maitland police station. At his post mortem several pre-death injuries were found. Haroon had 28 bruises on his legs as well as other injuries inconsistent with a fall down stairs. The inquest predictably found that nobody was to blame for his death.
- 19.2 The well-known case of Bantu Stephen Biko who died in Security Branch detention on 12 September 1977.
20. We also wish to raise the possibility of opening or reopening the inquests into the abovenamed.

Serious cases where amnesty was refused or no application made

21. Eleven cases have been selected following an analysis of the amnesty records of the TRC.
22. All the crimes are serious. They include murder, conspiracy to murder, attempted murder, kidnapping and torture. In all the matters listed the evidence is either available or can be secure through the most basic investigative steps. The 11 cases are:
- 22.1 Murders of Eustice "Bimbo" Madikela, Ntshingo Mataboge & Fanyana Nhlapo
- 22.2 Murders of Siphon Charles Hashe; Qaqawuli Godolozu & Champion Galela (Pebco 3)
- 22.3 Murders of Matthew Goniwe, Sparrow Mkhonto, Fort Calata & Sicelo Mhlauli (Cradock 4)
- 22.4 Kidnapping, Torture & Disappearance of Peter Thabuleka
- 22.5 Kidnapping & Murder of Ntombikayise Khubeka
- 22.6 Murder of Richard Motisi & Irene Motisi
- 22.7 Kidnapping & Disappearance of Moses Morudi
- 22.8 Kidnapping, Torture & Murder of Jameson Ngoloyi Mngomezulu
- 22.9 Murder of Johannes Sweet Sambo
- 22.10 Murder of Adriaano Louis Bambo

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22.11 Murder of Welcome Khanyile

23. The potential accused are those persons who were denied amnesty by the Truth and Reconciliation Commission (TRC) or who declined to apply for amnesty. Details of these cases are annexed hereto in a memorandum marked "A".
24. The 11 cases set out in Annex A are ripe for investigation and possible prosecution, and have been so for many years, if not decades. Where prosecutions are not possible inquests should be held or reopened.
25. Aside from discussing each case mentioned in this letter we also wish to discuss the possibility of these cases being handled by a small group of dedicated and committed prosecutors within the NPA, supported by carefully selected investigators.
26. In the circumstances we seek a meeting with you at your earliest convenience.

Yours faithfully

**WEBBER WENTZEL**

Moray Hathorn

Partner

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*Letter submitted electronically without signature.*



FRANS NGWAKO MATHIPA state under oath in English that:

1

I am a Captain in the South African Police Service stationed at the unit Crimes Against the State, Serious Organised Crime, Directorate for Priority Crime Investigation, General Piet Joubert Building, 218 Visagie Street, Pretoria CBD, from the context hereof, the facts herein contained are within my personal knowledge and belief both true and correct.

2

I am the current investigating Officer of Johannesburg Central CAS 798/10/2017 with the following team members:

- ✓ Sgt Dlamini
- ✓ Sgt Khoza
- ✓ Const Ubisi

3

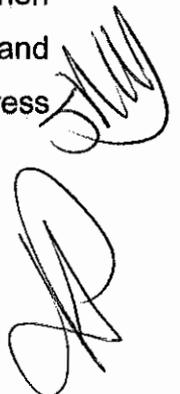
The reason the case was booked to us was that, the initial Investigating Officer was on sick leave, Capt Ben Nel. We received the docket in May 2018.

4

During the course of our investigation, we completed the outstanding investigation and obtained outstanding documentation.

5

During the course of our investigation we had to establish the whereabouts of Mr Roderiques to obtain his warning statement. His address on the docket which was registered by Captain Nel listed the address as 853 11<sup>th</sup> Street, Wonderboom South, Pretoria. Sgt Khoza and I visited this address twice but we could not find it. I then obtained Mr Rodriques contact number 0829566010. I contacted Mr Rodriques and an appointment was made to meet him on the 9<sup>th</sup> June 2018 at 10 o'clock. His address was actually 835 11<sup>th</sup> avenue, Wonderboom South, Pretoria.



5

On 9 June 2018 at 10 o'clock Mr Rodriques was visited. Sgt Khoza accompanied me but I entered first. Sgt Khoza came around the other side for safety reasons. We could not enter the yard as there were vicious dogs. Mr Rodriques had to come and collect me at the gate. He was walking fine with no difficulty and we walked into his study room where the interview was conducted. I told him about the purpose of my visit and he understood. Whilst we were busy, Sgt Khoza informed me that he was at the gate.

6

I further told him my colleague Sgt Khoza is on his way. He needed to be let in. As we started talking, Sgt Khoza was at the gate and we had to go and fetch him. He again walked with me and he was fine. He walked with no difficulty. After informing him of why we were there again, we warned him of his rights and obtained his warning statement. We conversed comfortably in Afrikaans. He confirmed that he was the last person in the room with Mr Timol and that Mr Timol jumped out of the window. He confirmed his testimony at the inquest of 1972 & IQ 01/2017.

7

On 20 July 2018, an application for J50 warrant was requested and was granted. An arrangement was made with Mr Rodriques's legal team to hand their client at Johannesburg Police Station on Monday, 30 July 2018. It was not our intention to arrest him and keep him in a cell until bringing him to court. The legal team of Mr Rodriques brought him to Johannesburg Police Station, handed him to me and I proceeded with him to the second floor of the police cells, using the stairs. It was the first time I saw him walking with a crutch. He never complained to me that he couldn't walk. He was charged and appeared in Johannesburg Magistrate Court and the case remanded to 18 September 2018.



At his unopposed bail application, which I attach at FM 1, it was noted that the accused suffered from the "usual ailments and illnesses associated with old age". He was able to inform the court that the problem with climbing up the staircase was nothing more than because of an operation he had on his leg two months prior. The court canvassed the issue of elaborating on his "sickness and health conditions", and he informed the court, through counsel, that he suffered from "diabetes...and things like that...but there is nothing specific that will effect him in such a way". No mention was made of a pacemaker and his heart condition, or a serious difficulty with his left knee and hip, or a problem with a fading memory.

I know and understand the contents of this statement.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.

Date: 2018/11/29

Time: 13:55

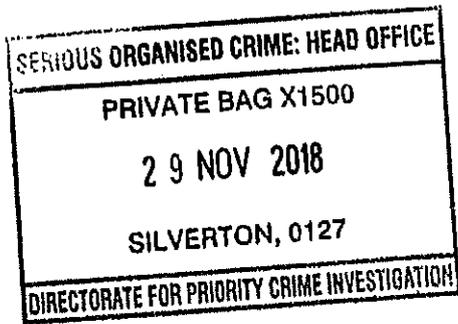
Place: Pretoria

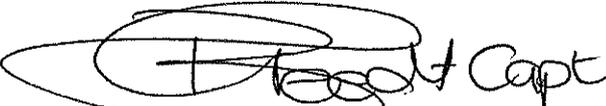
  
(SIGNATURE OF DEPONENT)  
FN MATHIPA


I certify that the deponent has acknowledged that he knows and understand the contents of this statement which was sworn to before me and the deponent's signature was placed thereon in my presence at Pretoria on 29 NOV 2018 at 13:57



  
COMMISSIONER OF OATHS  
ANNELIEN BREECHT  
GENERAL PIET JOUBERT BUILDING  
218 VISAGIE STREET, PRETORIA  
CAPT SA POLICE SERVICE

Capt Mathipa/Verklaring1(s)



TRANSCRIBER'S CERTIFICATE

This is to certify that, **insofar as it is audible**, the foregoing is a true and correct transcript of the proceedings recorded by means of a mechanical recorder in the matter of:

STATE // JA RODRIGUES

CASE NUMBER : 48/08/2018

RECORDED AT : JOHANNESBURG

DATE HELD : 2018-07-30

TRANSCRIBER : RENATE SONEMANN

NUMBER OF AUDIO FILES : 1

NUMBER OF PAGES : 31

**REPORT ON RECORDING**

1. The defence advocate is not using a microphone. He can only be heard via channel 1 and the noises generated by the magistrate and in the background frequently make his speech indistinct.



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Recording, Transcriptions & Translations

**Recordings, Transcriptions & Translations**

IN THE MAGISTRATES COURT  
FOR THE DISTRICT OF JOHANNESBURG CENTRAL  
HELD AT JOHANNESBURG

CASE NO: 48/08/2018

DATE: 2018-07-30

In the matter between

THE STATE

*versus*

JOAO ANASTACIO RODRIGUES

Accused

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**BAIL APPLICATION**

BEFORE : MR LABUSCHAGNE

ON BEHALF OF THE APPLICANT : ADV COETZEE

ON BEHALF OF THE RESPONDENT: ADV KHUMALO

ADV SINGH

INTERPRETER : MS MANNISENG



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**Recordings, Transcriptions & Translations**

PROCEEDINGS HELD ON 30 JULY 2018

[11:20]

COURT: Thank you you are on record. You may proceed and place everybody on record.

PROSECUTOR: Thank you Your Worship. Today being the 30 July 2018. The court's composition is as follows. Presiding officer Mr Labuschagne, for the state Advocate Khumalo and Advocate Singh, interpreter Ms Manniseng, and for the accused is Advocate Coetzee.

COURT: Thank you.

10 PROSECUTOR: Court pleases. Your Worship the accused appears on a charge of murder and also defeating the ends of justice. Murder which falls within schedule 6. And the matter is on roll for bail application. It is a formal bail application. Although in principle it is not opposed, but processes and procedures has to be followed. And the defence, or the applicant will move the bail application. As the Court pleases.

COURT: Thank you.

MR COETZEE: Thank you Your Worship. I confirm my appearance on behalf of the accused. Your Worship I can inform  
20 the Court that the accused is Afrikaans speaking. But he follows English very well, and he has no problem if the proceedings proceed in Afrikaans [sic].

Your Worship ...[Intervened]

COURT: Before we just proceed, let me just sort out a few ... I just want to establish his surname. Is it Anastotio or is



it Rodrigues?

MR COETZEE: Rodrigues is his surname.

COURT: Is his surname. Because I have written surname first and then a name. I just want to ... so Rodrigues is the surname?

MR COETZEE: Rodrigues is the surname.

COURT: I just want to confirm, you said that murder is applicable on count 1. Is the minimum sentence act going to be applicable on the charge?

10 PROSECUTOR: That is correct, My Lord.

COURT: Are the state going to rely in terms of section 51(1) Part I or II? So is it pre-meditated or your are not going to allege pre-meditated?

PROSECUTOR: That is 51(1) My Lord, 51(1).

COURT: So it will be pre-meditated?

PROSECUTOR: That is correct.

COURT: Sir your advocate have indicated that you can be seated. They have informed me that you had an operation on your leg, so you can be seated there.

20 Firstly I just want to establish, you follow in English, you do not need the Afrikaans interpreter?

APPLICANT: I can follow in English Your Worship.

COURT: You can follow in English. Sir secondly what I must explain to you. The charges against you is one of murder and the second count is defeating the ends of justice. So



firstly it is a schedule 6 offence, the first count of murder. So what it means is that you must ... there is an onus on you to prove that there is exceptional circumstances in your life which should permit you to be released out on bail.

Secondly, on the first count the State have indicated that the minimum sentence act is applicable. They are going to allege that it is a pre-meditated offence. So section 51(1) Part I of schedule 2 of act 105 of 1997 is applicable. If you are convicted of this charge the minimum sentence is one of life imprisonment.  
10 But the trial court can deviate from the minimum sentence in certain circumstances. Do you understand that?

Thank you advocate. You may proceed with the bail application.

MR COETZEE: Thank you Your Worship. I have prepared an affidavit. It was commissioned this morning at the police station. Which I will beg leave to read here. If I can hand Your Worship copy of the original thereof. And I will give the State as well a copy of the affidavit. And I beg leave to read it into the record.

20 COURT: You may proceed.

MR COETZEE: Thank you Your Worship.

"I the undersigned Joao Anastacio Rodrigues do hereby state under oath as follows.

I am an adult male person and the accused in this case.



The facts contained in this affidavit falls within my personal knowledge unless stated to the contrary and are [indistinct 11:24:44] correct.

I am the applicant in this application.

The nature of the application: this is an application for my release on bail pending the finalisation of the above trial.

10 Personal circumstances: my identification number is 3903275032086, my date of birth is on 27 March 1939. I am a South African citizen. I have no travel documents. I have never travelled outside the borders of the Republic of South Africa [indistinct 11:25:18] in any foreign country. The only relatives that I have living outside the Republic of South Africa is my brother Edward Rodrigues who is a Botswana citizen.

I have no assets outside the Republic of South Africa.

20 My personal background: I was born in Viljoenskroon in the Free State, I matriculated. I do not undergo any tertiary training or education. My work history is as follows. I was in the South African Police Service from 1956 to 1972. I was a senior journalist and an editor



of the Hopestad press. And I was employed at the National Parks Board.

I reside at 835 11<sup>th</sup> avenue, Wonderboom South, Pretoria. I have resided at the same address for a period of 34 years. My previous address was at 227 Myburgh street, Capital Park.

10

I am married to my wife [indistinct 11:26:15]. I have no other dependants. I am a pensioner. My only income is from my pension. I own the fixed property where I reside [indistinct].

Should my bail application be granted I would be able to afford an amount of R2 000 towards bail which will be available in cash from my own resources.

Should the Honourable Court set bail in a higher amount [indistinct 11:26:46] to facilitate the funding of the bail.

20

I submit further that all my financial, cultural ties are in the province [indistinct] the jurisdiction area of the above Honourable Court.

History of [indistinct 11:27:03]: I have one previous conviction in 1956 on a charge of perjury. I have not other pending trials.



I have been warned by the legal representative about the consequences of misleading the Court about my previous convictions and pending trial in terms of section 60(11)B) of the Criminal Procedures Act as amended which may result in my bail being revoked and [indistinct 11:27:30].

10

The [indistinct] background [indistinct]: I was arrested on 30 July 2018. [Indistinct] a warrant after my legal advisers were informed of my pending [indistinct] were made [indistinct] to the police. I understand that I am charged with murder that allegedly took place in 1971 whilst I was employed as a police officer.

I am advised that the charges brought against me fall under schedule 6 of the Criminal Procedures Act. I intend to plead not guilty to the charges against me.

20

The legal frame work for bail: I am advised that [indistinct 11a:28:09] will have regard to [indistinct] the discretion as to what is in the interest of justice would require as set out in section 64 of the Criminal Procedures Act and [indistinct] that there is exceptional circumstances to justify my release on bail.



I further submit the [indistinct] in terms of section 60(4)(A) of the act I will not endanger the safety of the public or any particular person or commit any offence. I further submit that there is no evidence of any likelihood that I will pose a danger to the public or the individual safety.

10

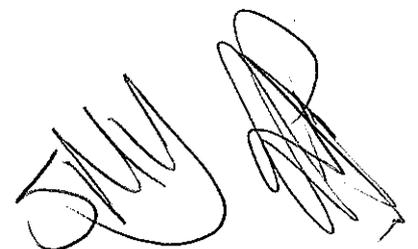
I further submit as provided for in section 60(4)(B) of the act that I will not attempt to evade any proceedings that might take place up to the conclusion of my trial. I intend to prove my innocence at the trial.

I have no desire to forfeit everything I have worked for up to now to become a fugitive of the criminal system.

20

I further submit the [indistinct] provided for in section 60(4)(C) of the act I will not attempt to influence or intimidate any person, or conceal or destroy any evidence. I am to my knowledge [indistinct 11:29:19] identity of all the state witnesses that might be called against me.

Should I know the identity of these witnesses the Court may impose any condition that cause me to refrain from any contact with such person. And I intend to abide by these

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conditions.

I further submit that as provided for in terms of section 60(4)(E) of the act I will not do anything that will undermine or jeopardise the objective of the proper functioning of the criminal justice system including bail system.

10 I further submit the fact provided for in terms of section 60(4)(E) of the act I will not do anything that might in any way disturb the public order or undermine the public peace and safety, nor will my release on bail cause such [indistinct].

Exceptional circumstances: The alleged crime was committed in 1971 when the deceased [indistinct 11:30:16] whilst in detention as a political detainee at John Vorster Square police station, Johannesburg.

20 I have been aware of the allegations that the deceased was murdered since the finalisation of the inquest in the above Honourable Court when it was finalised in 1972 to [indistinct 11:30:35] newspaper articles [indistinct] media publications.

The inquest finding of the Honourable Justice Motley was that I was not present when the accused died, but that my actions might be as



an accessory after the fact. The Honourable Justice Motley made the following finding in the inquest in paragraph 335(d). The cause of death was brought about by an act of him being pushed from the 10<sup>th</sup> floor of the roof of John Vorster Square building to fall to the ground. Such act having been committed to *dolus eventualis* as a form of intent and *prima facie* amounting to murder. There is *prima facie* evidence implicating Gloy and Van Niekerk who were on duty and interrogating Timol at the time when he was pushed and fell to his death. But previous [indistinct] to conceal the crime of murder as an accessory after the fact, and went on to commit perjury by presenting contrary [indistinct] evidence before the 1972 and 2017 inquest which should accordingly be investigated with a view of this prosecution.

The finding of the learned Justice was made on 22 May 2017 and I remained at resident at my house and did not in any way attempt to evade prosecution. When I became aware of that there was a warrant issued for my arrest, and after communications through my legal team and the prosecution, I presented myself to the

10

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police for arrest and presentation to this Honourable Court. I am no longer a young man and had no desire to end my days [indistinct] of the law. As most people of my age [indistinct] I suffer from ailments and illness [indistinct] associated with old age and suffer greatly should I be detained in cells..

10 I further undertake to adhere to any condition that this Honourable Court may impose if this Honourable Court indeed exercise its discretion in favour and order my release pending the finalisation of these proceedings.

In the circumstances I submit that my release is in the interest of justice and that I have proven that exceptional circumstances exist justifying my release on bail.

I therefore request the Honourable Court to order my release on bail pending the finalisation of the proceedings against me."

20 This affidavit was then signed [indistinct 11:33:05].

COURT: Thank you.

MR COETZEE: Thank you. [Indistinct].

COURT: Do you confirm the correctness of the contents of this statement which you have signed sir?

APPLICANT: Yes [indistinct].

Handwritten signatures of the court and applicant.

COURT: The statement is marked as EXHIBIT A for the bail proceedings. Is that the application from the applicant sir?

MR COETZEE: That the application [indistinct 11:33:23]

CASE FOR THE APPLICANT

COURT: Thank you sir.

PROSECUTOR: As the Court pleases. Your Worship I submitted earlier that the State is not fundamentally opposed to a bail application being granted. I, however, have an affidavit from  
10 the investigating officer which I beg leave to read into record.

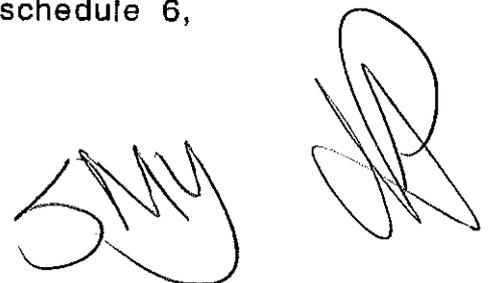
COURT: You may proceed.

PROSECUTOR: "In the State versus Rodrigues, Joao

Anastacio, I Frans Marko Matiba hereby state under oath that I am a captain in the South African Police Services stationed at [indistinct 11:34:01] Crimes against the State, that is Directorate for Priority Crime Investigation in Pretoria.

20 From the context here of, the facts herein contained are within my personal knowledge and belief both true and correct.

I am the investigating officer of Johannesburg Central CAS 798/10/10/2017. The accused is charged of murder and defeating the ends of justice. The offence falls within schedule 6,



that is the offence of murder.

The nature of the offence of which the accused is charged stems from the death of Mr Ahmed Timol who died in police detention in 1971 at John Vorster Square as it was then known, now called Johannesburg Central.

10 At an inquest into the deceased's death in 1972 the inquest court found that the deceased had committed suicide. However, new evidence led at a subsequent inquest held in 2017 before Judge Mothe. The re-opened inquest overturned the verdict of the suicide finding that Ahmed Timol did not commit suicide but was in fact murdered.

20 At all times relevant to the charge sheet the accused was employed as a police official within the security branch of the South African Police. By his own admission he was the last person to see the deceased alive on office 1026 at John Vorster Square police station.

From the investigations that I have undertaken, and the affidavits which I have in my possession it transpired that on the evening of 22 October 1971 a Ford Anglia bearing registration number TUW2315 driven by Mr

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, cursive 'SMY' and the second is a more complex, cursive signature.

Salim Issor, a 3<sup>rd</sup> year medical student was intercepted at a road block on Fuel road, Coronationville. Mr Ahmed Essop Timol the deceased a teacher, was a passenger in the vehicle.

10

The road block set up on 22 October 1971 at approximately 22:40 in the midnight was manned by amongst others, but not limited to members of the then South African Police uniformed branch members: Sergeant Leonard Kleyns, Constable Adam Alexander Theunis and the station commander of the Newlands police station Major Kloppers.

20

The above mentioned vehicle was stopped at the road block. After searching the boot of the vehicle both the deceased and Essop were arrested for allegedly being in possession of prohibited pamphlets and documents of banned political organisations namely the South African Communist Party, the SACP, and the African National Congress, that is the ANC.

Both the deceased and Essop were transferred in custody to Newlands police station and further detained for contravention of the provisions of section 6 of the Terrorism Act 83

Handwritten signatures in black ink, appearing to be the names of the parties involved in the application.

of 1967.

The security branch was a branch of the South African Police whose function amongst other was to gather intelligence so as to assess the threats to the State in the then Apartheid South Africa.

10

Apartheid was a system of [indistinct 11:37:46] racial segregation and discrimination that was in existence from 1948. Members of the security branch at John Vorster Square police station, including senior members were informed of the arrest of both the deceased and Essop.

20

At Newlands police station Essop and the deceased were separated from each other. Soon thereafter, and during the early hours of the morning of the 23 October 1971 other senior members of the security branch at Johan Vorster Square, including but not limited to Captain Dekker, Colonel Freyling arrived at [indistinct 11:38:30] station.

Essop was interrogated and repeatedly assaulted by members of the security branch. After the assault Essop was handcuffed, placed in an unmarked police vehicle, driven by



Freyling and another police official. They drove to the offices of the South African Police station at John Vorster Square. During the early hours of the morning of 22 October 1971 the deceased was transported to John Vorster Square police station by Derrick and Kleyns. Lieutenant Colonel Willem van Wyk from the security branch head quarters in Pretoria was informed of the arrest of Essop and the deceased.

10

He arrived a John Vorster Square police station at around 03:15 in the morning. During his period of detention from the 23 October 1971 to 26 October 1971 Essop was tortured and severely assaulted by members of the security branch at John Vorster Square police station.

On 26 October 1971 Essop was hospitalised in a comatose state as a result of assault and torture on him by members of the security branch.

20

From the time of his detention on 22 October 1971 until his death on 27 October 1971 the deceased was still in police detention in room 1026 and subjected to continuous interrogation and torture by the security branch.



On 27 October 1971 the deceased was still in room 1026 on the 10<sup>th</sup> floor of John Vorster Square police station. Never having ever been detained in any cell at any stage of his detention at the said John Vorster Square.

At the time of his death the deceased was under the care of the accused Captain Johannes Hendrik Gloy and Johannes Zakarias van Niekerk. Gloy and Van Niekerk arrived at John Vorster Square on the morning of the 23<sup>rd</sup> October 1971 at 06:00 in the morning.

On instructions of Van Wyk all three police official Gloy, Van Niekerk and the accused were based at the security branch head quarters in Compol building in Pretoria.

The accused arrived at John Vorster Square police station on 27 October 1971. The accused Gloy and Van Niekerk tortured and assaulted the deceased. Prior to his death, and whilst in their custody and under their care, the deceased sustained multiple bruises and fractures, including but not limited to inter alia the nasal bone, left orbital rhombus, right inferior rhombus, fractures of the left and upper jaw, and isolated depressed skull fracture,



I have established that the accused has a fixed address. The accused has a permanent residential address at home at house 835 11<sup>th</sup> avenue, Wonderboom South, in Pretoria. And he has resided at this address for the past 54 years.

10 The accused is a South African citizen with identity number 3903275032003. He is not a holder of a passport. He is 79 years old, he is retired and a pensioner. He is married and has 5 self-supporting adult children who reside on their own.

I submit that he has sufficient personal ties to stand trial.

20 The accused has only one registered fixed property namely that mentioned in paragraph 24.2 above. He is also an established author and has published at least 8 books, besides serving as a member of the South African Police. He also worked as a senior journalist at Pretoria newspaper and at Parks Board.

I have established that the accused has no outstanding warrants and no pending cases. He does, however, have a previous conviction in that on 27 June 1956 he was convicted of



[indistinct 11:45:03] perjury for contravention of section 9 of act 16 of 1914 and was given a suspended sentence for 5 years provided he was not convicted of any offence involving dishonesty.

I submit that under the circumstances the accused does have exceptional circumstances to justify his release on bail. He is almost 80 years' of age. Was aware of the possibility of being charged already in October 2017 and did not flee.

10

Furthermore his personal circumstances as well as the fact that he has a fixed property establish a reason for him to remain in South Africa.

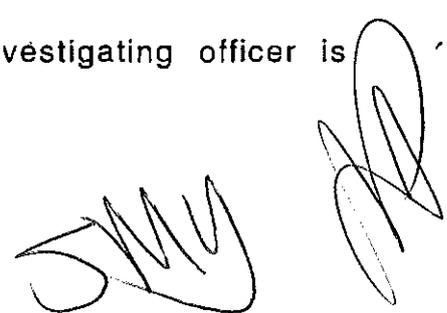
If the accused is admitted to bail an amount of approximately R2 000 with normal bail conditions would be appropriate."

Thus signed by the investigating officer Captain FM Matiba. Your  
20 Worship I beg leave to hand in same as EXIBIT B and be made to form part of the record. Further Your Lordship that will be the case for the respondent.

COURT: Respondent.

CASE FOR THE RESPONDENT

COURT: Statement of the investigating officer is



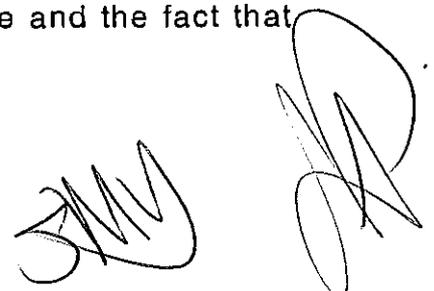
marked as EXHIBIT B to the record. Thank you. Advocate Coetzee. You may proceed addressing the Court on bail.

MR COETZEE ADDRESSES THE COURT: Your Worship I can indeed [Indistinct 11:46:39]. Your Worship it is not [indistinct] that the law has been very clear in relation to what the standard of proof is that the accused has to reach to show the Court what is exceptional circumstances, as to what actually is exceptional circumstances. I think it is less clear and it is being said that it can be normal circumstances which in a specific case the Court  
10 can do a value judgment to consider as to whether or not it is exceptional circumstances.

[Indistinct] with to address the Court and to be exceptional circumstances this [indistinct] the mere fact that the accused has been residing at the same address for past 54 years in itself, although perhaps not [indistinct] it is something to be [indistinct] there is the fact that he clearly show that he is a very secure person and that he is not a flight risk at all.

One should have, with respect, at all stages pertaining to account that the two main issues when considering bail, and even  
20 when considering the exceptional circumstances is whether it will ensure the presence of the accused at the trial. And second of course whether there is a risk that he will either interfere with the state case or [indistinct 11:48:06] whilst he is out on bail.

It is respectful my submission that there is no such likelihood and that that coupled with his old age and the fact that



this offence was committed in 1971. He has been aware of this allegations, even more particularly so of the 2017 inquest. And he has not done anything to try and evade the prosecution and/or to interfere with the police investigation.

Your Worship the inquest finding is quite interesting. The Honourable Judge found there, and one will have to look at the fact which is contained in the docket once we have the docket in relation to the charges that is preferred against him. Specifically in the line of the premeditated murder claim by the State to see  
10 what exactly that entails and how did they get to that.

And at this stage it is difficult for me to address that issue in that we have not had the discovery as yet. To the best of our ability we have referred Your Worship to the finding of the judge in the inquest.

Your Worship I can stress to the Court that it is the discretion of the Court obviously to grant or not to grant bail. And on that value judgment as to what does the interest of justice require in the instance of this matter. And whether that at all is advanced by the exceptional circumstances or not that was  
20 presented by the accused.

It is my respectful submission that indeed there was such evidence shown and that it was shown on a balance of probability. And I would ask the Court to grant the accused bail and to grant the bail in the amount of R2 000.

If there is anything specifically Your Worship on which to



address you on, I will gladly do so.

COURT: Sir, yes. I see on page 12, paragraph 9.7 you refer in general to ailments and illnesses regarding age. I do not know if your client do not want to elaborate may be on that. Because I had to wait, because I know there was difficulty for him to get into court because of the steps.

MR COETZEE: Your Worship I was worried. If I may say I was worried about the steps. It seems to be it was not as problematic for him as I thought it would be. This is quite steep  
10 steps. And he had two months ago he had that operation in his foot. As a concern, I was worried that he might have problems. It seems to be my worry was not necessarily founded.

Your Worship I have asked the accused regarding sickness and what is his health conditions. He has got diabetes and he has got things like that Your Worship. But there is not specific, I cannot tell Your Worship that he has got a specific illness that will effect him in such a way. As I said he is a bit proud, he does not want [indistinct 11:51:28]. I just wish to put [indistinct] on record is that I was concerned as to whether he would get up the stairs  
20 because they was steep steps.

COURT: Alright.

MR COETZEE: Thank you.

COURT: Thank you advocate. Thank you. From the State's side.

PROSECUTOR ADDRESSES THE COURT: As the Court pleases



Your Lordship like we initially said and submitted that in principle the State is not fundamentally opposed to the granting of bail. And we believe and submit that the applicant has made out a case which meets the requirements of section 60(4).

And it is my, therefore, submission that bail may be granted in the amount of R2 000. And that normal bail conditions must accompany the granting of bail.

As for the assumption by my colleague that his client was unable to walk the stairs that is the case for another day. As the

10 Court pleases.

COURT:

Thank you. Thank you sir.



JUDGMENT  
BAIL APPLICATION

The applicant is charged of count 1 murder and count 2 defeating the ends of justice. The charge sheet was not drafted by the State but was verbally set out in the bail application what the charge is going to be against Mr Rodrigues.

The applicant was represented by Advocate Coetzee, and for the State Advocate Khumalo appeared.

Both the applicant and respondent agree that this is a  
10 schedule 6 offence. The Court then proceeded to explain to Mr Rodrigues the proceeding regarding schedule 6 and the onus which is placed on him to prove to get bail.

Further the Court also explained to him section 51 of act 105 of 1997 which entails the minimum sentence act which is applicable on count 1.

Advocate Coetzee then confirmed that they would proceed by way of affidavit and read out a statement into the record. And after confirmation by Mr Rodrigues this affidavit was received as EXHIBIT A to the record.

20 I am not going to give a summary of the affidavit, it was read out here in open court and it is so fresh in everybody's memory.

Thereafter the applicant closed its case and the State proceeded to read out a statement from the investigating officer which was received as EXHIBIT B to the record. Now I am also



not going to give a summary of that statement regarding this bail application.

Now it is common cause that the applicant is charged of an offence listed in schedule 6 of the Criminal Procedures Act. And that in terms of section 60(11)(A) of the said act the Court is obliged to order the detention and will only be empowered to grant bail if the applicant can advance exceptional circumstances why he should be released.

The onus is on the applicant to satisfy the Court on a  
10 balance of probabilities that such exceptional circumstances exist.

In State versus Vanga 2000 (2) SACR 371 TK, Jafta J put forward the following two fold enquiry:

"The applicant for bail is first enjoined to establish that his circumstances are exceptional as envisaged in section 60(11)(A). Secondly he is required to prove that such circumstances justify in the interest of justice that bail be granted.

If the first leg of the enquiry that distinguish the onus born  
by the applicant is not successful then the second leg will not be  
20 applicable.

Now we have heard from the statements the applicant is 79 years old. He already knew from October 2017 that there is a possibility that he will be formally charged for the murder of Mr Timol. He is residing at his home address for 54 years. And he is not a young man. He handed himself over to the police after it



came to his knowledge that a warrant of arrest was issued for him.

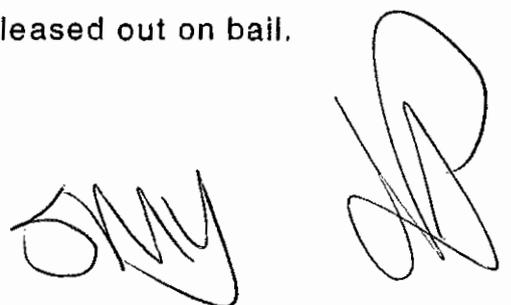
And as stated by the State they are not formally opposing to bail for Mr Rodrigues.

Now it is true what Advocate Coetzee has said. There is numerous cases which discuss the question of what is exceptional circumstances. But what is more important is all these cases states firstly that each case must be dealt on its own merits. You cannot generalise when it come to the decision what  
10 is exceptional circumstances.

Taking in consideration the facts placed before this Court, and the fact that the State is not opposing to bail for Mr Rodrigues, taking in consideration his age and that he does not have a passport, the Court is of the opinion that the applicant has overcome the onus placed on him to prove exceptional circumstances. And thus the first leg has been proven by the applicant.

Secondly the question if it is in the interest of justice to be released out on bail. The Court is led by section 60(4)(A-E) of  
20 the Criminal Procedures Act which sets out grounds. If that exist then the Court cannot grant bail. And after evaluating the evidence placed before the Court, the Court can find none of the grounds as set out in section 60(4)(A-E) to exist.

In light of that the Court is satisfied that it is also in the interest of justice that Mr Rodrigues be released out on bail.



On a question on what amount must be set by the Court, the applicant and the respondent have agreed to an amount of R2 000. I can see no reason why must the Court interfere at this stage with the agreement between the applicant and respondent.

Thus bail is set in the amount of R2 000 from Mr Rodrigues and I will set out the normal set of bail conditions when I remand the case further for Mr Rodrigues. Thank you sir.

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10

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Two handwritten signatures in black ink are located at the bottom right of the page. The signature on the left is more compact and stylized, while the one on the right is larger and more fluid.

PROSECUTOR: As the Court pleases. Your Worship the indictment for the accused is ready. And we have in fact issued ... the indictment is ready to be served on the accused. And we request that the matter be then transferred to the High Court for appearance on 18 September this year.

COURT: Do you have copy of indictment. Because I am must serve it on the accused in court physically.

PROSECUTOR: That is correct.

COURT: And if I do not have a copy then it is going  
10 to be difficult. So I need just the orderly to physically hand  
Mr Rodrigues the indictment here in open court.

PROSECUTOR: That is correct.

COURT: You can just ...

PROSECUTOR: The appearance will be for pre-trial  
conference on 18 September 2018.

COURT: Advocate Coetzee I still do not understand  
the DPP. I am said that there is somebody from the DPP's office  
because they have a lot of instructions usually for this Court to do  
for indictments. But in light that it is for pre-trial conference I do  
20 not know if it is necessary that I must go for everything: what  
language, what witnesses must be subpoenaed by the defence for  
the state etc. I do not know if it is just for pre-trial conference is  
it necessary for the Court to go through all these aspects as set  
out from point 4 to 8.

PROSECUTOR: Your Lordship the Court can dispense with



that.

COURT: Can I dispense with that?

PROSECUTOR: That is correct Your Worship.

COURT: Advocate I just want to place ... have you on record, are you going to appear formally in the trial for Mr Rodrigues in the High Court?

MR COETZEE: I do have instructions [indistinct 1:59:51].

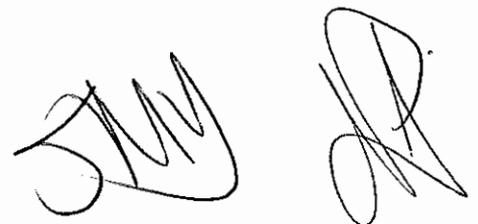
COURT: If you just formally can place me on record the instructing attorney's name and address and telephone number, as well as your telephone number. That it is just on the record which is typed for the High Court, because that they want.

MR COETZEE: Certainly Your Worship. Your Worship I [indistinct 12:00:13] Advocate Stephanus Coetzee from the Pretoria Bar has been briefed by the State Attorney Pretoria. The attorney briefing me in this instance is Mr Ben Minnaar from the State Attorney. The telephone number for the State Attorney [indistinct 12:00:27 someone blowing his nose loudly] on the Pretoria code 012 309 1538. And my telephone number, I prefer my cell number, because I am in court most of the days, is 20 082 410 3188. That is my place where I practice is in High Court chambers, 220 Madiba street, room 717.

COURT: Thank you.

MR COETZEE: Thank you sir.

COURT: Mr Rodrigues you have received the indictment here in open court. This case is in terms of section



75(1)(C) of act 51 of 1977 transferred to the High Court in Johannesburg for the 18 September 2018. This will be for pre-trial conference which will be held on that date. Unfortunately the indictment does not indicate what court you must appear in. So usually when you arrive there at the High Court at the entrance there will be a court roll and they will tell you which court to go to.

Your bail is fixed in an amount of R2 000. If you pay the bail you may be released. Then you must sure you are back at the High Court in Johannesburg on 18 September 2018 at 08:30  
10 in the morning.

You will be kept in custody until you pay your bail of R2 000. Do you understand. Thank you. Court will adjourn.

COURT ADJOURNS

[12:02]

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RCM 18

IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NUMBER: 76755/18

In the matter between:

**JOAO RODRIGUES**

Applicant

and

**THE NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS OF SOUTH AFRICA**

First Respondent

**MINISTER OF JUSTICE AND  
CORRECTIONAL SERVICES**

Second Respondent

**THE MINISTER OF POLICE**

Third Respondent

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**CONFIRMATORY AFFIDAVIT IN RESPECT OF  
SUPPORTING AFFIDAVIT OF RC MACADAM**

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I, the undersigned,

**VUSUMZI PATRICK PIKOLI,**

do hereby make oath and state that:

1.

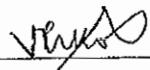
I am a duly admitted advocate of the High Court of South Africa. I have read the Supporting Affidavit of RC Macadam and confirm the correctness of its contents in respect of the period when I was the National Director of Public Prosecutions (NDPP).

2.

I confirm the authenticity of the documentation attached to para 46 of his affidavit. These are all documents of which I had had sight while I held office. I specifically confirm the correctness of the Memorandum addressed to the Minister by myself marked RCM17.1

never received a favourable response to this Memorandum nor did the state of affairs with TRC cases improve.

I know and understand the contents of this statement.  
I have no objection to taking the prescribed oath.  
I consider the prescribed oath to be binding on my conscience.

  
VP PIKOLI

Date: ~~October~~ 2018 **NOVEMBER 7th**  
Time: **09:00**  
Place: **PRETORIA**

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration, which was sworn to before me and the deponent's signature was placed thereon in my presence

**7 November**  
at **PRETORIA** on ~~OCTOBER~~ 2018 at **09:00**

  
: (RANK)  
COMMISSIONER OF OATHS

Full names: **HILBERTUS MARTINUS Mathys Fugm**

Rank: **Colonel**

Address:  
Ex Officio: **SA Police Service**