



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA**

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES.

(2) OF INTEREST TO OTHER JUDGES: YES

(3) REVISED.

DATE

SIGNATURE

**CASE NUMBER: IQ01/2017**

In the matter of:

**THE RE-OPENED INQUEST INTO THE DEATH OF  
AHMED ESSOP TIMOL**

**JUDGMENT**

**MOTHLE J**

## INTRODUCTION

1. The 1972 inquest into the death of AHMED ESSOP TIMOL (*Timol*) was formally re-opened by the High Court on 26 June 2017, in terms of section 17A of the Inquests Act 58 of 1959 (*the Act*). The 1972 inquest was held following Timol's death in 1971. The purpose of re-opening the inquest is to investigate the circumstances leading to the death of Timol in 1971, in light of further evidence that has been uncovered.
2. It is a matter of record from the 1972 inquest that the incident which resulted in Timol's death occurred on 27 October 1971, at which time Timol died while held in custody by members of the Security Branch of the South African Police (*Security Branch*). The then Attorney-General, Johannesburg, declined to prosecute. Consequently an inquest into the death of Timol was held in Johannesburg, under case reference number 2361/71 from April to June 1972 (*the 1972 inquest*), before Senior Magistrate M De Villiers (*the magistrate*) assisted by Professor Simpson (*Prof. Simpson*) a medical doctor, as assessor.
3. At the end of that inquest the magistrate concluded and found In essence that Timol had committed suicide and no person alive was responsible for his death. The family of Timol did not accept this finding, and for a period of approximately 43 years had to live with the magistrate's decision.
4. With the assistance of the Human Rights Foundation and eminent legal counsel<sup>1</sup>, Timol's nephew, Mr Imitiaz Cajee (*Cajee*) obtained further evidence relating to the death of Timol, which enabled them to

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<sup>1</sup> Advocate George Bizos SC of the Johannesburg Bar.

approach the National Director of Public Prosecutions (“NDPP”) with information that was not placed before or considered by the magistrate conducting the inquest in 1972. The NDPP made a recommendation to the Minister of Justice and Correctional Services for the re-opening of the inquest in terms of section 17A of the Act.

5. Acting in terms of this section of the Act, the Minister forwarded the recommendation from the NDPP to the Judge President of the Gauteng Division of the High Court of South Africa, who in turn designated a Judge to re-open the inquest.<sup>2</sup>
6. The re-opening of this inquest in the High Court of South Africa is the first of its kind<sup>3</sup> by a Superior Court and presided by a Judge of the High Court.<sup>4</sup>
7. It is apposite to state up front that this 2017 re-opened inquest started off with a limp. Firstly, the inquest relates to an incident which occurred 46 years ago. As it turns out, out of about thirty members of the Security Branch of the South African Police involved in the arrest, detentions as well as the investigation of the case concerning Timol’s death, only three were found still alive. Two of the three former police officers who testified during the hearing of oral evidence in 1972, were served with subpoenas to testify again in the 2017 inquest and were in attendance during the proceedings.
8. Secondly, the records of the 1972 inquest are incomplete. At the commencement of the 2017 proceedings it was drawn to the attention

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<sup>2</sup> Judge President D Mlambo of the Gauteng Division designated the writer of this judgment Judge S.P. Mothle, to re-open and preside over the inquest proceedings.

<sup>3</sup> Counsel for the NDPP who was the evidence leader, confirmed that this re-opening was the first of its kind in South Africa.

<sup>4</sup> Inquests are ordinarily presided over by magistrates, although the Act defines the “Judicial Officer” as including District and Regional Magistrates as well as a Judge of the Superior Court.

of the Court that the record of proceedings of the 1972 inquest runs up to 1,157 pages, ending with the 77 page judgment by the magistrate. The Court only received portions of this vital record which starts from page 653 up to the end. Mysteriously missing from the record are pages 1 to 652, which consists mainly of the oral evidence of the police witnesses, the originals or copies of the relevant photographs and other exhibits.

9. The Court received copies of the sworn statements (affidavits) of the police witnesses. However, in the case of Mr Joao Rodrigues's<sup>5</sup> 4 page affidavit, page 3 thereof has also mysteriously disappeared. This missing page 3 provided details as to how in Rodrigues's version, Timol fell from the 10<sup>th</sup> floor of John Vorster Square building. The version in the missing page of Rodrigues's affidavit was narrated in summary by the magistrate in his judgment, which is part of the records that survived the mysterious disappearance of documents. The 2017 re-opened inquest thus had to rely on the magistrate's summary as well as the oral evidence of Rodrigues delivered in person in 2017 proceedings, to appraise itself of the contents of the missing page 3 of his affidavit.
10. This monumental task of re-opening the 1972 inquest was largely simplified by the evidence of witnesses who testified orally in Court. The Court is indebted to these witnesses as well as those who submitted affidavits. In particular, this Court recognises the courage with which the witnesses, who are former detainees, were able to share with this Court and through this Court, the public, as to how they had to endure abuse, humiliation and torture at the hands of the Security Branch. Their contribution has been of tremendous assistance to this proceedings.

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<sup>5</sup> A member of the Security Branch and main witness for the police.

11. The Court also expresses its gratitude to the legal representatives of the NPA, the family of Timol and the former members of the Security Branch. Their participation and contribution throughout this inquest was also valuable to this Court. Advocate George Bizos SC is the only lawyer who participated in both the 1972 inquest and the 2017 re-opened inquest, 46 years later. This Court is indebted to him and all experts for their contribution.
12. It is through the persistent effort of Mr Imitiaz Cajee that this historic sitting of the re-opened inquest occurred. His efforts should be emulated as an example of how citizens have to assert their rights.

#### **THE INQUESTS ACT 58 OF 1959.**

13. Inquests proceedings are regulated by the Act. The purpose of holding an inquest is to investigate the circumstances of death apparently occurring from other than natural causes and where the prosecutor had declined to prosecute. It is therefore an inquisitorial *cum* investigation process.
14. In ***Timol v The Magistrate of Johannesburg***<sup>6</sup>, the Court had this to say about inquests:

*“Nevertheless, the inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of death.”*
15. The Appeal Court in ***Marais NO v Tiley***<sup>7</sup> echoed the sentiments of ***Timol v The Magistrate supra*** as follows:

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<sup>6</sup> 1972 (2) SA 28 (T). This reported decision arises out of the 1972 inquest, where the Timol family brought an interlocutory application against the magistrate and prosecutor, for an order compelling them to make available all documents of the inquest. The Court granted the order sought.

<sup>7</sup> 1990 (2) SA 899 (A) at 901F-902A-B

*“...The underlying purpose of an inquest is to promote public confidence and satisfaction; to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences and so that persons responsible for such deaths may, as far as possible, be brought to justice...”*

16. Recently In ***Freedom Under Law v NDPP***<sup>8</sup> this Division of the High Court also had this to say about the purpose of an inquest:

*“[72] An inquest is an investigatory process held in terms of the Inquests Act which is directed primarily at establishing a cause of death where the person is suspected to have died of other than natural causes. Section 16(2) of the Inquests Act requires a magistrate conducting an inquest to investigate and record his findings as to the identity of the deceased person, the date and cause (or likely cause) of his death and whether the death was brought about by any act or omission that prima facie amounts to an offence on the part of any person. The presiding officer is not called on to make any determinative finding as to culpability.”*

17. Section 17A (1) of the Act was inserted into the original text as an amendment by section 1 of Act 145 of 1992. It provides thus:

*“The Minister may, on the recommendation of the Attorney General concerned, at any time after the determination of an inquest and if it deems it necessary in the interest of justice, request a Judge President of a provincial division of the Supreme Court of South Africa to re-open that inquest, whereupon the Judge thus designated shall re-open such inquest.”*<sup>9</sup>

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<sup>8</sup> *Freedom Under Law v National Director of Public Prosecutions and Others* 2014 (1) SA 254 (GNP)

<sup>9</sup> Please note that the words “*the Attorney General*” and “*a provincial division of the Supreme Court of South Africa*” in this section refer to the National Director of Public Prosecutions and a provincial Division of the High Court of South Africa respectively, as restructured and re-named in terms of the provisions of the Constitution of the Republic of South Africa, 1996.

18. Section 1 of the Act defines “*judicial officer*” as “*a judge of the Supreme Court of South Africa, a regional magistrate or a magistrate.*” In practice, the inquests in South Africa are presided over by a regional magistrate or magistrate. Judges get involved when there is an appeal or review of the inquest findings made by the judicial officer in the magistrate court. However, in regard to the re-opened inquests, section 17A provides specifically for the designation of a Judge to preside over a re-opened inquest.
  
19. The Act draws a subtle distinction between the re-opening of an inquest in terms of section 17 (2) and in terms of section 17A. Under sections 17 (2) and (3), an inquest is re-opened at the request of the Attorney General<sup>10</sup> (presently Director of Public Prosecutions), directed to the judicial officer *who presided over an inquest*, to take further evidence generally or in respect of a particular matter. In practice it would ordinarily be before a regional magistrate or magistrate who made the finding. This process is designed to focus on taking further evidence following an initial finding of the inquest Court.
  
20. In regard to the section 17A re-opening, the Director of Public Prosecutions makes a recommendation to the Minister for the re-opening of the initial inquest, by a designated Judge, who is also empowered *mutatis mutandis* to take further evidence generally or in respect of a specific matter as in section 17 (2). Thus section 17A of the Act empowers the Judge presiding to exercise the provisions of section 17 (2) and to take further evidence generally or in respect of any matter, in effect for the purposes of the reconsideration of the entire evidence including *on the existing record*. Most importantly,

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<sup>10</sup> South Africa had an Attorney General for each of the provincial and local divisions of the then Supreme Court. In terms of Section 43 of the National Prosecuting Authority Act 32 of 1998, a person holding the position of Attorney- General shall be deemed to be appointed as director in terms of the NPA Act.

Section 17A (3) (b) obligates the Judge to record any finding that differs from a finding of the initial inquest as referred to in section 16(2), as well as the respect in which it differs.

21. Section 17A (3) (a) empowers the presiding Judge to cause any person who has already given evidence in the inquest to be subpoenaed to give evidence in the re-opened inquest. The witnesses are for the Court not the parties participating. It is not the purpose of an inquest to resolve a dispute between parties, even though there may be a tendency by participating parties to protect or promote their interests. The judicial officer should thus guard against inadvertently being drawn to approach the proceedings as would be the case in resolving a dispute between such parties. The proceedings are thus not adversarial but rather inquisitorial.
22. The inquest proceedings should not be conducted like criminal trials. However, they are more aligned to criminal proceedings than civil proceedings. Section 8 (2) of the Act provides that the laws governing criminal trials shall *mutatis mutandis* apply to securing the attendance of witnesses at an inquest, their examination, the recording of their evidence, the payment of their allowances and the production of documents or material.
23. There is also the added factor in that the presiding judicial officer must, consistent with the Bill of Rights in the Constitution, draw to the attention of witnesses who may be at risk of possible prosecution, of their rights against self-incrimination and procurement of legal representation, prior to testifying. The evidence leader will be from the prosecution and the presiding Judge may appoint assessors. It is in consideration of these factors that while an inquest is not a criminal

trial, the inquest court should be constituted more in line with criminal proceedings<sup>11</sup> than civil proceedings.

24. The order of the presentation of the evidence is determined by the presiding judicial officer and mostly depends on the availability of witnesses at a given time. Ordinarily the proceedings would commence with formal opening statements, first by the presiding judicial officer and thereafter by participating parties. In the scheme of things, the investigating officer who gathered documentary and other evidence would be the ideal witness to start with, followed by eye witnesses if any. The investigating officer should be led by the evidence leader from the prosecution.
25. The Inquest Act empowers the presiding officer to call for and receive affidavits. Where necessary, he/she may decide to hear oral evidence. In this regard, the presiding judicial officer is empowered to summon witnesses to appear in person at the inquest proceedings in order to testify.
26. At the end of the proceedings and in terms of section 16 of the Act, the presiding judicial officer is required to record a finding upon the inquest as to the identity of the deceased person; the cause or likely cause of death; the date of death and whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person. Should the presiding judicial officer be unable to record any such finding, she or he is required to record that fact.
27. Finally, the re-opened inquest is neither an appeal nor a review of the initial inquest. In both these instances, a court is confined to the

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<sup>11</sup> In practice, Judges in the High Court presiding in criminal trials wear red robes as opposed to regular black robes.

record of the initial inquest and only empowered to admit new evidence when a case has been made out for such. The re-opened inquest requires a reconsideration of the entire evidence considered by the initial inquest as well as the evidence that was available at the time of death, which for one or other reason was not or could not be considered during the initial inquest proceedings, and has become available. This is the information that would justify a re-opening

28. I now turn to deal with the background to the facts concerning the arrest and detention of Timol.

## **BACKGROUND**

29. According to the evidence of his brother Mohammed and friend Professor Salim Essop (*"Essop"*), Timol was born in the small town of Breyten in what is now Mpumalanga on 3 November 1941. He was the eldest son of Hajee Yusuf Ahmed Timol and Hawa Ismail Dinder. Timol was one of the six children in the family. In 1949, the family moved to Roodepoort on the west rand near Johannesburg. In 1955, the family moved back to the town of Balfour, in Mpumalanga where Timol's father opened a shop. Timol went to school in Standerton, Mpumalanga as there was no school in Balfour at the time. He completed his high school education at the Johannesburg Indian High School. Once more, the family moved back to Roodepoort in 1956 where the father opened a trading store. The family struggled to survive to the extent that Timol had to leave school and be employed as a clerk at a bookkeeper's office in Johannesburg. He later obtained a scholarship to pursue a teaching course at the Johannesburg Training Institute for Indian Teachers. It is at that school that between 1962 and 1963 he served as Vice Chairperson of the Students Representative Council.

30. He completed his teacher's diploma in 1963 and was posted to the Roodepoort Indian School. As a teacher he was reported to have been well loved and respected by colleagues and students and a popular teacher at school. On 26 December 1966, Timol went to the Hajj (the pilgrimage to Mecca), where he proceeded via Cairo, Egypt, to settle in London and obtain a teaching post there. It was at this time that he was joined by his younger brother Mohammed. While in London, Timol was recruited to join the South African Communist Party which operated underground in exile. He was trained in conducting underground work and dissemination of information, including through letter bombs. He returned to South Africa in February 1970 and resumed his teaching post at the Roodepoort Indian School. His brother Mohammed testified that he had an inclination that he (Timol) was returning to South Africa to be involved in the struggle against apartheid. He had been trained and prepared to serve in the struggle against apartheid by Dr Yusuf Dadoo. Dr Dadoo, who was based in exile in Europe, was the National Chairman of the South African Communist Party ("SACP") as well as the Vice Chairman of the Revolutionary Council of the African National Congress ("ANC"). The SACP and the ANC were banned organisations at that time.
31. It was further common cause that during this time, Timol established an SACP underground unit in South Africa. One of the members of the underground unit was Essop, then a third-year student at the Medical School of the University of Witwatersrand ("Wits"). He now holds a Doctoral degree in Philosophy.
32. Essop, who was regularly in the company of Timol, testified in the 2017 re-opened inquest that on the night of the 22 October 1971 at

about 23H00 pm at night, he was driving a motor vehicle, Ford Anglia with registration numbers TU 22315 on Fuel Road in Coronationville. He was with Timol. They encountered a road block which directed them to stop. The road block was manned by Sergeant Leonard Gysbert Kleyn ("*Kleyn*") and Const. Adam Alexander Cecil Thinnies ("*Thinnies*"), both members of the South African Police stationed at Newlands Police Station in Johannesburg. After asking routine questions as to where the two passengers in the vehicle were travelling to, the police indicated they wanted to search the boot. In the boot the police found pamphlets of the banned SACP. Essop and Timol were arrested and taken to Newlands Police Station together with the impounded vehicle and the documents found in the boot.

33. At the Newlands Police Station. Sergeant Kleyn phoned Warrant Officer Neville Els ("*Els*") who was a member of the South African Police, attached to the Security Branch at John Vorster Square. He was on stand-by duty that evening. Kleyn informed him of the arrest. Timol was locked up in a cell and Essop was put on a bench awaiting the arrival of Els. On arrival, Els took charge of the documents and pamphlets found in the boot. He then phoned senior officials of the Security Branch who later also arrived at the police station. These were Captain Dirker followed by Colonel Greyling ("*Greyling*"). Captain Dirker took Timol to the Security Branch offices at John Vorster Square and Essop was transported by Greyling to the same offices.
34. Essop, whose evidence of their arrest is by and large corroborated by Kleyns, Els and Thinnies, testified further that he was first taken to the office of Greyling on the 9<sup>th</sup> floor of the Security Branch offices at John Vorster Square, where he was interrogated and tortured. Apart from having seen Timol for the last time when they were separated at

Newlands Police Station, Essop testified that sometime during his detention, he was standing in the strong room when through the open door, he could see a person looking very much like Timol being escorted by two police officials, having a hood on his head and walking slowly with great difficulty. Police officers held him by both hands on either side of the body. That was the last glimpse of Timol that Essop had.

35. It was only in March 1972, when he first appeared in court that Essop became aware that Timol died in detention on the 27 October 1971. The evidence before the 1972 inquest confirmed the identity of Timol as well as the date of death.
36. Consequent to the arrest of Timol and Essop on the night of 22 October 1971, the Security Branch went on a raid the following day and arrested 20 other persons whom they presumed to be linked to Timol. Among them who testified in the 2017 re-opened inquest, was Mr Kantilal Naik (*“Naik”*) (currently a retired professor of mathematics), Timol’s brother Mr Mohammed Timol (*“Mohammed”*), arrested in Durban and Ms Dilshad Jetham (*“Jetham”*), presently a medical doctor and cardiologist. Like Timol and Essop, these former detainees and others, with exception of Mohammed who was in Durban, were also detained and interrogated during that same weekend at the same place, John Vorster Square, at about the time Timol met his death.

***Security legislation in 1971.***

37. Before turning to the evidence presented in both inquests, it is necessary to state, as the evidence presented before the 2017 re-opened inquest showed, that there were detainees who died in detention before Timol and many others thereafter. Thus, in order to

facilitate an understanding of the context within which the events unfolded at that time, it is apposite to succinctly examine the pivotal role played by the security laws in force in the apartheid South Africa.

38. It is a well-known practice internationally that governments of the day are constitutionally or by legislation obligated to protect the state against foreign and domestic threats. Legislation in place would generally establish security structures whose functions would be, amongst others, to gather intelligence so as to assess the threats to the state and where necessary, take pro-active action to prevent attacks on the State.<sup>12</sup>
39. The apartheid government took measures to deal with the activists opposed to the apartheid system; this much is clear from Rodrigues' evidence.<sup>13</sup> These measures entailed enactment of pieces of legislation to authorise various law enforcement agents to suppress dissent to the segregation laws. The implementation of these measures resulted in the detentions of scores of people.<sup>14</sup> These pieces of legislation included.
- a. ***The 1950 Suppression of Communism Act***<sup>15</sup> which outlawed the "*Communist Party of South Africa*" and prohibited organisations from pursuing communist ideas and objectives. Subsequent to the declaration of the Communist Party of South Africa to be an unlawful organisation, the SACP took its place. It too was banned

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<sup>12</sup> Some of these security units would be established by rogue governments to disempower political opponents during political power contestations.

<sup>13</sup> Joao Rodrigues is a former member of the Security Branch linked to the death of Timol. During the presentation of his oral evidence in Court, he repeatedly described the situation that prevailed at that time as "*oorlog*", (war).

<sup>14</sup> People arrested and held in terms of various security-related legislation were referred to as detainees.

<sup>15</sup> Act 44 of 1950

until February 1992, when together with other organisations which were prohibited, it was unbanned. It is still in existence;

- b. **The General Law Amendment Act**<sup>16</sup> which authorised police to detain without warrant any person suspected of politically motivated crime for up to ninety days without access to a lawyer, doctor or any family or visitors (*incommunicado*)<sup>17</sup>. On expiry of the ninety days many detainees had their period of detention extended by a further ninety days. Subsequent thereto, the **Criminal Procedure Amendment Act No. 96 of 1965** lengthened the span of detention to 180 days which remained renewable;
- c. **The Terrorism Act**<sup>18</sup> whose purpose was to prohibit terroristic activities. The Act defined terrorism as anything that might endanger the maintenance of law and order. It is this act, which in terms of Section 6 thereof, authorised detention of persons for a period of 60 days which was renewable, for purposes of interrogation without trial. These powers were conferred on police officers of the rank of Lieutenant-Colonel and above. It is during detention under this particular section that South Africa saw the torture and death of many detainees as well as the torture of many more others who survived. It is further under this particular section in terms of which the detainees, including Timol, were detained indefinitely *and incommunicado*. Only the Commissioner, subject to directions from the Minister, was authorised to order a release of such detainee “*when satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention*”.

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<sup>16</sup> Act 37 of 1963.

<sup>17</sup> A colloquial term used to explain the condition where the detainee is unable to communicate with any civilian or any civilian being unable to communicate with the detainee.

<sup>18</sup> Act 83 of 1967.

d. ***The 1982 Internal Security Act***<sup>19</sup>, this Act was later amended by the ***1991 Internal Security and Intimidation Amendment Act***<sup>20</sup>. This Act repealed the Terrorism Act but retained most of the provisions of that Act, including the provisions of section 6 referred to above. Section 6 of the Terrorism Act was restated with minor changes as section 29 of the Internal Security Act. It also introduced several kinds of detention including preventative detention without interrogation in terms of section 10 and detention in terms of section 50, which authorised detention for fourteen days.

40. The Internal Security Act of 1982 was repealed following the adoption of the Constitution, 1996, which ushered in a new democratic order with a Bill of Rights. Chapter 11 of the Constitution, in particular section 198(d), places national security under the authority of Parliament and the National Executive, with the Courts retaining the jurisdiction to pronounce on the constitutionality or legality of both the statutes and conduct of officials authorised to act in terms thereof.

41. Timol, people associated to him and many other detainees were held in terms of the provisions of section 6 of the Terrorism Act. In order to appreciate the extent of the unfettered powers granted to the police under this section, it is necessary to quote the full text of the section. It reads thus:

*“6(1) Notwithstanding anything to the contrary in any law contained, any commissioned officer as defined in Section 1 of the Police Act, 1958 (Act 7 of 1958), of or above the rank of Lieutenant Colonel may, if he has reason to believe that any person who happens to be at any place in the Republic, is a terrorist or is withholding from South African Police any information relating to*

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<sup>19</sup> Act 74 of 1982  
<sup>20</sup> Act 138 of 1991

*terrorists or to offences under this Act, arrest such person or cause him to be arrested, without warrant and detain or cause such person to be detained for interrogation at such place in the Republic and subject to such conditions as the Commissioner may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when satisfied that he has satisfactorily replied to all questions at the third interrogation or that no useful purpose will be served by his further detention, or until his release is ordered in terms of subsection (4).*

- 6(2) The Commissioner shall, as soon as possible after the arrest of any detainee, advise the Minister of his name and the place where he is being detained, and shall furnish the Minister once a month with the reasons why any detainee shall not be released.*
- 6(3) Any detainee may at any time make representations in writing to the Minister relating to his detention or release.*
- 6(4) The Minister may at any time order the release of any detainee.*
- 6(5) No court of law shall pronounce upon the validity of any actions taken under this section, or order the release of any detainee.*
- 6(6) No person other than the Minister or an officer in that service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee.*
- 6(7) If circumstances so permit, a detainee shall be visited in private by a Magistrate at least once a fortnight."*

42. This section was an affront to various human rights values such as the rights prohibiting arbitrary arrest, detention, torture, denial of due process, political activism or advocacy, freedoms of movement, association and expression. Most importantly, it indirectly placed the lives of detainees wholly in the hand of the interrogators. As the evidence demonstrates, some of these lives were lost, including that of Timol. Section 6 prohibited civilian accesses to the detainee and excluded the jurisdiction of the Courts to inquire into the conditions under which a detainee was held and interrogated.
  
43. The only right the detainee had was to write to the Minister for his release. Given the circumstances of secrecy under which detainees were held, it is doubtful whether detainees were informed of this right, let alone being assisted to exercise it. Consequently, and as the evidence in these and other inquests demonstrate, this drastic legislation became a tool in the hands of some members of the Security Branch, not only to torture but also to kill detainees with impunity.
  
44. The 2017 inquest proceedings heard evidence that apart from the death of several detainees in detention, some of those that were released from detentions or released from prison after serving sentence, were subjected to a different form of detention. They were served with banning orders which effectively meant self-monitored detention.<sup>21</sup> The banning orders would entail house arrest, restriction on the number of people the banned person might associate with or be in the company of at any given time and restriction on attending or participating in any gathering.

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<sup>21</sup> Sections 8 and 9 of the Suppression of Communism Act.

45. The effect of security legislation did not end there. It permitted the Security Branch to repeatedly enter, without a warrant, the work place and residence of a detainee, to ransack the premises, search and seize documents and anything they deemed to be an instrument used for terroristic activities<sup>22</sup>. In the process, they would threaten and question on the spot, parents, siblings and relatives of the detainee present in the residence. In short, the harassment of the family of the detainee, and after his/her release, they would continue the harassment in the form of repeated visits, partly to isolate the released detainee and his/her family from friends and neighbours. Such harassment would often become unbearable to an extent that the person who had been detained would choose to leave South Africa and go into exile.
46. The evidence presented, reveals that the family of Timol, like many other families, was subjected to all these experiences; the arrest, detention and subsequent death of Timol in detention; the arrest, detention and torture of his brother Mohammed; the harassment of their parents and family members during the detention of both Timol and Mohammed, through numerous visits to their home; the banning order with all the restrictions served on Mohammed upon his release; and Mohammed eventually having to leave South Africa and go into exile. All of these incidents as stated above were the consequence of various provisions of the security legislation operations at that time, in particular the Terrorism Act and Suppression of Communism Act.
47. The evidence further reveals the role of some carefully selected prosecutors, magistrates and medical doctors who were complicit in the declaration of the so-called war against those opposed to the apartheid order. These persons betrayed and demeaned their

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<sup>22</sup> Section 7 (3) of the Suppression of Communism Act.

respective oaths of office by participating in inquests proceedings that became a sham; concealing the atrocities committed by the Security Branch and ensuring that the judicial system finds “**No one to Blame**”.<sup>23</sup>

48. Since the advent of democracy in South Africa, there has been progress in dealing with the past security legislation. The security laws that were at the centre of the atrocities committed on detainees ended with the demise of the apartheid order. The Security Branch no longer exists. Parliament, constituted in terms of the 1994 Democratic dispensation, enacted the ***Protection of the Constitutional Democracy against Terrorist and Related Activities, Act 33 of 2004***. This statute provides for measures to prevent and combat terrorism and related activities as well as other measures to enable the security forces to investigate any activities which may result in crimes against the State. It provides for supervised detention and recognises the jurisdiction of the courts to intervene where necessary. This new security legislation repeals the last vestige of the apartheid security laws, namely, the ***Internal Security Act of 1982***.

49. Having witnessed and experienced the atrocious events which led to the Second World War, the international community in 1948 took measures to ensure that people all over the world should be protected by a set of human rights values, against incidents of arbitrary arrests, detention and torture. ***Article 5 of the Universal Declaration of Human Rights, adopted by the United Nation General Assembly on 10 December 1948, resolution 217 A (III)*** provides:

*“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*

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<sup>23</sup> The evidence of Advocate George Bizos SC, who appeared as a legal representative in many such inquests. ***No one to Blame*** is the title of his book which was submitted as evidence in court. His evidence on the role of some magistrates and doctors complicit in the sham is corroborated by Paul Erasmus, a former member of the Security Branch, who also testified in the 2017 re-opened inquest.

50. The African Countries adopted a similar declaration called **Article of 5 the African Charter On Human and Peoples' Rights, Adopted on on 27 June 1981. It reads:**

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his<sup>24</sup> legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”*

51. South Africa followed in 1996 with the enactment of **section 35 (2) of the Constitution of the Republic of South Africa, 1996 thus:**

*“Everyone who is detained, including every sentenced prisoner, has the right-*

- (a) To be informed promptly of the reason for being detained;*
- (b) To choose, and to consult with, a legal practitioner, and to be informed of this right promptly;*
- (c) To have a legal practitioner assigned to the detained person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
- (d) To challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;*
- (e) To conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expens, of adequate accommodation, nutrition, reading material and medical treatment and;*
- (f) To communicate with, and be visited by, that person’s-*
  - (i) Spouse or partner;**
  - (ii) Next of kin;**
  - (iii) Chosen religious counsellor; and**
  - (iv) Chosen medical practioner.”**

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<sup>24</sup> I take it that “his” also includes “her”.

52. I now turn to deal with the summary of the evidence of 1972 and 2017 inquests.

### **THE 1972 INQUEST PROCEEDINGS**

53. The 1972 inquest proceedings before the magistrate commenced in April and ended in June 1972. The witnesses who testified in that inquest were the arresting officers; about 14 members of the Security Branch of different ranks ranging from Constable to Colonel, who might at one stage or another, have interrogated Timol, Essop and other detainees during the same weekend as Timol at John Vorster Square; about 6 police officials from ranks of Warrant Officer to Major General, attached to the Criminal Investigation Department, who investigated the death of Timol; Timol's parents, Yusuf and Hawa Timol; one Mr M Kahn a funeral undertaker; a journalist Mr Swart; 2 assistant curators at the state mortuary as well as 4 medical officials being Dr V D Kemp, District Surgeon Johannesburg, Dr N J Schepers Senior State Pathologist, Dr H Koch the pathologist who testified on behalf of the police and Dr J Gluckman, the pathologist for the Timol family.
54. In regard to the interrogation of Timol, the approximately 20 police officers who filed affidavits for the 1972 inquest, deposed to the same version, namely that Timol was never assaulted or subjected to any form of ill treatment while in detention. The version they put forward is that on the 27 October 1971, Joao Anastacio Rodrigues (*"Rodrigues"*), a sergeant attached to the Security Branch who travelled from the Compol Building offices of the Security Branch in Pretoria, to John Vorster Square to deliver salary cheques for Captain Johannes Hendrik Gloy (*"Gloy"*) and Captain Johannes Zacharias

Van Niekerk (*“Van Niekerk”*). The two Captains were interrogating Timol at that time. The time was approximately 3.40 pm (15h40).

55. Rodrigues, who also testified in the 2017 re-opened inquest, presented his version as follows: He found the two captains sitting with Timol in room 1026 at the John Vorster Building. While they were sitting with Timol, an unidentified member of the Security Branch called Mr X, came through the door and said to the other two officials that a breakthrough had been made in identifying some people whose names appeared in one of the documents confiscated from Timol’s room. The version goes further to state that Timol got into a fright and the two police officials requested Rodrigues to guard Timol while they followed Mr X out of the room.
  
56. It was while he was sitting with Timol that Timol requested to go to a toilet and they both stood up. It is at this point that there are different versions from the evidence of police officers as recorded by the Magistrate.
  
57. One version by Major-General Christoffel Andries Buys (*“Buys”*)<sup>25</sup>, supported by Goy and Van Niekerk, is that Timol stood up, went to the door and as Rodrigues was standing up to follow him, he then suddenly turned and went to the window which he opened and jumped out. Rodrigues could not stop Timol because he was obstructed by the table between them as well as the chairs which were on both sides of the left and right of the table and stumbled on the one on the left trying to stop Timol.

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<sup>25</sup> Buys was head of the Criminal Investigation Department (CID) and head of investigation into the death of Timol. He testified on what he alleges Rodrigues told him, which Rodrigues denied at trial.

58. The second version by Rodrigues is that Timol stood up, indicated that he wanted to go to the toilet, and immediately went to the window, opened it, and jumped out as Rodrigues was struggling to overcome the table and the chair on the left as obstacles, to reach Timol.
59. The third version also by Rodrigues is that as Timol stood up, he also stood up and moved to the left to come around the table. While he was pushing the chair on which Van Niekerk was sitting, under the table, at that time he saw Timol going towards the window. Rodrigues moved to the right to go around the table between them and he stumbled and fell as he was obstructed by the chair on which he had been sitting. At that moment, he was on the floor, unable to reach Timol, when he witnessed how Timol opened the window and jumped to his death.
60. The police, in spite of the contradictions, testified in support of Rodrigues and broadly stood by this version. They either denied that they had ever assaulted or inflicted any injuries on Timol, or testified that they did not see any injuries on his body.
61. In the absence of that portion of the record of proceedings dealing with the evidence by the police, the 2017 re-opened inquest was deprived of the benefit of the record of police officers' evidence in chief, cross-examination and re-examination. Consequently, the 2017 re-opened inquest was constrained to deal with the version as deposed to in the sworn statements by each of the police officials and summarised by the magistrate in his judgment.
62. There was also the evidence of Timol's parents. This evidence relates to the various trips undertaken on different dates by different

police officials from the Security Branch, who went to search and confiscate materials, articles and documents from Timol's room while he was held in detention. At some point during one of the visits, there was an altercation between Timol's mother and a member of the Security Branch. Bizos who testified in the 2017 re-opened Inquest, described this incident in his affidavit as follows:

“90. *Ms Hawa Timol (Ms Timol) testified at the inquest that on 26 October 1971 two Security Branch members arrived at her home to look for a book. She asked this policeman, ‘where is my son, please I want to see my son’. One police member then said: ‘You cannot see your son anymore’. She then asked him: ‘Why, Sir, I am so sad, you are ....’ The police member in question then allegedly said: ‘He must get a hiding’. Then she asked him: ‘Why, Sir, you beat my son and I did not beat my son.’ He then answered: ‘You did not beat him that is why we are now beating him.’ Then she said: ‘You say that you are giving my son a hiding, you must listen well, Sir, if somebody gives your son a hiding, his mother will also be sad. You must not give my son a hiding.’*

91. *Warrant Officer Van Rensburg, one of the Security Branch officers who visited the Timol home to retrieve a book, gave a different account of the conversation. He related it as follows: Ms Timol asks: ‘I want to see my son’. He answered: ‘You cannot see him’. Ms Timol: ‘Why did you capture him?’ Answer: ‘He was naughty’. Ms Timol: ‘My child was never naughty; I never gave him a hiding.’ Answer: ‘Listen, old mother, a child must get a hiding. If you gave him a hiding then he would not have been crying now.’*

92. *Needless to say the Magistrate rejected Ms Timol's version as unconvincing. It was not unusual for the courts to prefer the evidence of the Security Branch members."*

63. The surviving record of the 1972 Inquest has the evidence of the medical doctors and the post-mortem report.

64. The record of proceedings reflects how considerable time was spent in dealing with the evidence of the medical doctors in regard to what appeared to be evidence of injuries on the body of Timol, which were not consistent with his fall from the 10<sup>th</sup> floor of the John Vorster Square Building. These were the injuries that appeared to have been sustained by Timol before his death, *ante mortem*. Bizos had this to say about the evidence relating to the post mortem on the body of Timol:

"81. *Gluckman had noticed numerous injuries which were not fresh. He explained that histologists could date the injuries by the length of the macrophage cells. The healing process comes about as healthy cells make themselves longer in order to devour or replace the injured cells. By measuring the length of the macrophages cells, you could determine whether the injury was inflicted more than two, four, six, eight, ten or twelve days before death.*

82. *The scientific evidence showed that the injuries on Timol's body were probably inflicted while he was in custody. Three pathologists testified: the State pathologist, Dr Schepers, Dr Gluckman for the family, and Prof Koch for the police. The main difference of opinion related to the timing of pre-death injuries, which Drs Schepers and Gluckman opined that the injuries were inflicted within 4 to 6 days prior to the fall, (during the first or*

*second day of detention) while Prof Koch opined that the injuries were sustained 5 to 8 days prior to the fall (before Timol's arrest and detention).*

83. *It should be noted that Koch was the same person who said that he had examined Essop after his admission to hospital and that there were no injuries, as alleged by the detainee's father, Mr Ismail Essop. His failure to mention the sixteen injuries that Dr Kemp had noted on Essop was disingenuous, to say the least."*

65. Koch's posture did not assist the court either. His view was not objective as would be expected of an expert. He virtually placed all the *ante-mortem* injuries well before Timol's arrest, between 9 and 12 days. Bizos testified that Koch was roundly criticised by his colleagues for the sloppy manner in which he presented his analysis. The summary of joint examination of slides by Koch, Schepers, Gluckman and Shapiro which were conducted in the presence of the assessor, Simpson, yielded disagreement between Koch on the one side and the rest of the other doctors on the other.

66. Bizos testified that in the application brought by Mr Ismail Essop on behalf of his son Essop, Koch failed to mention 16 injuries that Kemp had noted on Essop. According to Bizos, Koch was disingenuous to the court. He had this to say about him:

*"it was obvious that Dr Koch had lied under oath when he stated that he had not seen any injuries. He attempted to explain himself by claiming that he was not asked by the lawyer to say whether there were injuries on Essop, but merely to deal with the question whether or not Essop had the specific injuries described by his father in his original affidavit. Koch had said that the injuries he saw differed from those described by Mr Ismail Essop. It was also argued that disclosing the injuries would reveal*

*information about the detainee. This was prohibited by the Terrorism Act unless those holding him consented. The judges hearing the application did not adversely comment on Koch's lack of candour or the correctness or otherwise of his alarming interpretation of the Terrorism Act."*

67. The Magistrate, in a seventy seven page judgment, summarised the evidence of each of the police who testified in some detail, which summary proved to be helpful to the 2017 re-opened inquest. The judgment also dealt with the medical evidence as well as that of the police involved in the investigation of Timol's death. He dismissed out of hand the evidence by Timol's mother, in regard to the verbal altercation she had with the police at her home. In essence the Magistrate reached conclusions that came under attack in the 2017 re-opened inquest. Firstly he dismissed the submission that murder was involved as absurd because Timol was a valuable find to the Security Branch who desperately wanted to keep him. Secondly he also dismissed the theory that Timol fell by accident as being absurd. He concluded that Timol must have jumped out of the window on his own accord. Thirdly, the magistrate decided on the basis of the medical evidence that some of the injuries found on Timol's body are not consistent with the fall. The abrasions could have been between 4 and 8 days old and the bruises between one and seven days old. He further concluded that Timol was in custody for 4 days and seven hours prior to his death. Fourthly, he opined in relation to the *ante mortem* injuries that the nearest one could come to an explanation is that the injuries were sustained in a 'brawl' where he was pushed around and possibly fell. Fifth, even though Timol was interrogated for long hours, the magistrate found that he was treated in a civilised and humane way. There was therefore no basis to find any form of torture or mistreatment. Sixth, the magistrate also accepted that the evidence before him indicated beyond reasonable doubt that the deceased committed suicide. Seventh, he accepted that Timol was a communist

and a prominent member of the communist party in South Africa. Timol was therefore conversant with all orders to SACP members including one which said: *“Rather commit suicide than betray the organisation.”*

68. At the end of the 1972 inquest, the magistrate made the following findings in terms of section 16 of the Act:

*“(a) The identity of the deceased is Ahmed Essop Timol, an Asian male, 29 years old, born South African, teacher by profession.*

*(b) Date of death: 27 October 1971.*

*(c) Cause or probable cause of death: the deceased died because of serious brain damage and loss of blood sustained when he jumped out of a window of room 1026 at John Vorster Square and fell to the ground on the southern side of the building. He committed suicide.*

*(d) No living person is responsible for his death.”*

69. I will deal with the magistrate’s conclusions and findings on the evidence as it was then, within the context of the 2017 re-opened inquest evidence to which I now turn.

## **THE 2017 INQUEST PROCEEDINGS**

### ***Summary of evidence***

#### ***Captain Nel***

70. Captain Benjamin Nel (*“Nel”*) of the South African Police Service is stationed at the unit: Crimes Against the State, Organised Crime and

Directorate for Priority Crime Investigation. The unit: Crimes Against the State is mandated to investigate cases relating to the Truth and Reconciliation Committee (“TRC”). Captain Nel is the investigating officer in this re-opened investigation and was tasked to accumulate the evidence and records of the 1972 inquest proceedings. He testified that he downloaded a copy of the inquest record from the University of Witwatersrand historical papers’ website. He also contacted the South African National Archives who confirmed that the inquest records were not available. The archives supplied a document from the Department of Justice dated 13 June 1986 authorising the destruction of old inquest registers and files which included that of Timol. He also proceeded to Johannesburg Magistrate’s Court where he was informed that the records were not available.

71. Captain Nel managed to trace from the archives of the South African Police, the whereabouts of police officials who were involved in the investigation of the Timol case and other people who were also involved in the inquest. He compiled a list of these police officials and could establish that only three of them were still alive. He further established that the undertaker, Mr and Mrs Timol, Drs Kemp, Schepers, Gluckman and Prof Koch are all deceased. He further found out that Senior Magistrate J J L De Villiers is also deceased.
72. He interviewed a number of witnesses as well as former members of the Security Branch of the South African Police to establish the methods of interrogation. Two of these former members were Mr Roelf Venter and William Smith whose applications served before the TRC hearings. He could further establish from Brigadier Wahl Du Toit that the South African Police Printing Mill was used to print documents that could be used as negative propaganda by the State

to frame its enemies. He also studied cases in the law reports relating to Timol, the book by Bizos titled "**No One to Blame**" as well as two other publications, one by Imtiaz Cajee titled "**Timol a Quest for Justice**" and the other by Don Foster, Dennis Davis and Diane Sandler titled "**Torture in South Africa**".

73. Captain Nel managed to obtain copies of newspaper reports that were in circulation at that time relating to the Timol and Essop detentions. He testified further that he found a total of 54 files of people who were arrested as a result of the arrest and interrogation of Timol and Essop from the archives. He also established that other than Timol and Essop, there were 20 other persons who had been detained and interrogated by the police as they were believed to form part of Timol's so-called main unit assisting the Communist Party of South Africa. The names of these persons appear in Captain Nel's affidavit and include those of Timol's brother Mohammed, Professor Kantilal Naik and Dr Dilshad Jetham. Their affidavits were also filed as part of the record as Exhibit "C".
  
74. Captain Nel further testified that in the course of his investigation he visited the John Vorster Square Building and in particular the offices where Timol, Essop and others were held and interrogated from Friday 22 October 1971 to Wednesday 27 October 1971, when Timol died. In particular, Captain Nel interviewed one of the surviving members of the Security Branch linked to the Timol case, Rodrigues who, as already stated alleged that he was in the room with Timol when he fell to his death. Rodrigues is one of the few members of the Security Branch linked to the Timol case, who are still alive.
  
75. Also of critical importance Captain Nel obtained a document with a title "*Inkululeko Freedom No 2*" dated February 1972, as part of the

records. The significance of this document will be dealt with later under evaluation.

***Professor Salim Essop***

76. Professor Salim Essop was born in Johannesburg on 21 May 1949. He testified as follows: He grew up in Roodepoort and in 1967 matriculated from the Roodepoort Indian School where Timol taught. On passing matric he enrolled for a medical degree at the University of Witwatersrand in 1968. It was on 22 October 1971 while travelling with Timol in a car that his medical studies were interrupted by his arrest and detention.
77. He met Timol as a student studying for his junior certificate (Standard 8) in 1965. Timol was his class teacher. Timol left South Africa in 1966, settling and working in London for a few years. During his stay in London, Timol associated with South African political exiles. Since he was committed to the anti-apartheid struggle, he accepted an offer of ANC and the SACP to return to South Africa to help resuscitate the underground structures and in particular arrange for the distribution of their political literature. Timol and Essop were living in the same area where they would often bump into each other on Marais Street in what he described as "*the lappies neighbourhood*". They struck up a friendship where Essop eventually got to participate in underground political activities together with Timol.
78. He joined Timol's unit whose task was to organise an underground infrastructure by setting up small groups, known as "*propaganda units*". Timol's main responsibility was to acquire, print and distribute literature for both the ANC and the SACP. Essop assisted Timol in the distribution of newsletters and pamphlets which possession was

in contravention of the law. He worked for nearly twenty months with Timol, disseminating ANC political leaflets through the post, acquiring printing, photographic and other equipment, and planning to set up a viable political underground structure inside the country. Timol had different mailing addresses at which he would receive correspondence and packages from London, often in tea, biscuit or chocolate packages. Even though he was assisting Timol, Essop never had any contact with anyone abroad and was never recruited and never attended any ANC or SACP meetings in South Africa. He and Timol worked closely together for approximately twenty months starting from February 1970 until his arrest in October 1971.

79. Upon their arrest, they were taken to Newlands Police Station and separated. Timol was taken away by two police officers while he was taken to the back of Newlands Police Station where there was a small two-storey building with a metal staircase. He was also escorted by two members of the Security Branch. He subsequently learned that these two police officers were Major J H Fourie and Colonel J Van Niekerk. His interrogation started right at the Newlands Police Station where he was asked questions about his travel with Timol and the assaults started. He was continually punched and slapped. The assault continued for about an hour. They then took him back to the police station reception area and handed him over to Colonel Piet Greyling ("*Greyling*").
80. Essop was then transported to the John Vorster Square building to the office of Greyling on the 9<sup>th</sup> floor. After making a few calls, Greyling left him with Sergeant Kleyn who assaulted him further. When Greyling returned, the beating stopped and Greyling sent Kleyn away. Greyling then forced him to hand over the house keys and make him produce maps of his room at his parents' house and locker

at Wits. He was thrust up and down and sideways causing his head to hit the floor several times. He testified that he was in pain as this torture continued for hours.

81. He was taken to an office on the 10<sup>th</sup> floor with a wooden door which, when opened, revealed a steel door, something akin to a safety door of a bank vault. He was then taken into a strong-room attached to that office which was in fact a vault. It is a room that measured 4 x 3 meters perimeter and 3 meters height without any windows except for two airbricks and the steel door that opens only from the outside. It is in this room that Essop was held from Friday, 22 October to Tuesday, 26 October, day and night subjected to hours and hours of torture. The only time he left that vault was when he was escorted to a bathroom that is situated hear the stairwell. On one occasion when he was washing in the bathroom, one officer took him to look out the window of the bathroom: *“He asked me if I had heard of an Indian man, Babla Saloogee, (who had, I knew, died in detention in 1964 after he was flung from a window of the 7<sup>th</sup> floor of Greys Building, Johannesburg, which was the old headquarters of the Security Branch). This officer also told me that I would fall to my death from 10<sup>th</sup> floor. I prayed silently that I would not be subjected to such a fate. I was taken back to the vault by the two officers.”*

82. Many security officers were involved in inflicting pain on him during the middle and final phases of the torture in the vault. These officers came in pairs and alternating. They applied numerous torture methods, including the following:

*“(a) Placing a bag over my head and suffocating me;*

*(b) Applying electric shocks and stepped up voltage rate to my tongue and lower limbs thereby inflicting excruciating pain;*

- (c) *Delivering repeatedly the so-called 'mule kick' to my lower limbs and thus stiffening them to almost unbendable rods;*
- (d) *Holding me by my ankles and dangling my body from the stairwell on the 10<sup>th</sup> floor whilst threatening to drop me to my death;*
- (e) *Forcing me into unconscious state and thereafter throwing water or even urinating on me to revive me; and*
- (f) *Subjecting me to continuous sleep deprivation to exhaust and disorientate me."*

83. At some stage during detention he was instructed to half-squat. He was ordered to sit on a chair near the wall but there was no chair. He was ordered to simulate sitting on a chair in a half-squat position. Two police officers stood alongside him one on the one side and the other on the other side. They started beating him up on the sides while he was in that squatting position which caused him to collapse to the floor several times. When that happened, they lifted him back to the "sitting" position and continued delivering the punches and the kicks. This treatment was called "*the mule kick*". At the end of that treatment he was ordered to tell them everything otherwise he would be subjected to the same treatment again.

84. Essop was taken to the bathroom to wash himself and on the way back he was taken first to the stairwell where he was reminded that there were ten floors down to the ground. He was made to look down the void in between the spiral stairwell. He was lifted and held dangling from the stairway on the void. He kept dangling away from the railing of the stairwell while being held by his ankles. He felt

dizzy, disoriented and despondent. After a while he was lifted up and taken back to the vault.

85. At some point during the interrogation, Essop cannot even recall what day it was, the vault door was left open while he was standing inside, he looked to his right and could see the passage as the door leading to the office in which the vault is situated was open. He testified thus:

*“This is when I last caught a fleeting sight of Timol. He had a black hood placed over his head and was being dragged along by two Security Branch officers. I knew immediately that this was Timol as I was familiar with his physique and height. He was not able to walk normally and was being held up by security officers on either side of him who were holding onto the sides of his trunk. I got the impression that the Security Branch had ‘worked on him’ in the same manner as they had on me, perhaps with even greater savagery. I presume that they had taken Timol to the toilet and were walking him from the toilet, probably the same toilet that I was also taken to a few times to urinate and wash the blood off my body, and this may have been a reason they had taken Timol to the toilet. Although I could not be hundred percent certain, I believe that the day I saw Timol was Monday, 25<sup>th</sup> October 1971. Even today, when I reflect on my last sighting of him I feel a sense of overwhelming sadness knowing that the Security Branch probably singled him out for the most vicious and sadistic treatment.”*

86. It was during interrogation that he collapsed and lost consciousness a few times. Greyling called a doctor to examine him. Essop recalls that this happened on the morning of Tuesday 26.
87. He has a hazy memory of what happened after Dr Kemp left the vault. He was later to learn that he was initially transported in an

unconscious state to the General Hospital in Johannesburg and thereafter to Hendrik Francois Verwoerd Hospital in Pretoria. He cannot testify as to why he was removed from the Johannesburg General Hospital to the H F Verwoerd Hospital in Pretoria.

88. From the hospital he was detained further in prison until his appearance in Court.
89. Essop's trial took place at the old Synagogue on Paul Kruger Street, Pretoria. On 31 October 1972, he was convicted and sentenced to five years imprisonment. After an unsuccessful application for leave to appeal, he was held at Leeuwkop Prison in Pretoria. He was later transported to Cape Town where he was taken by ferry to Robben Island to serve his five-year sentence. It was when on Robben Island that he met Nelson Mandela, Walter Sisulu, Govan Mbeki, Ahmed Kathrada, Mac Maharaj and others who were serving long or life sentences. When he was released from Robben Island after five years, he was served with a five year banning order and taken to his home in Roodepoort.
90. After serving more than three years of his banning order, he escaped from South Africa to go into exile and lived and worked in several countries before settling in the United Kingdom where he is currently based as a retired academic. He could only visit South Africa several times after 1994. He was never called to testify in the 1972 inquest into the death of Timol.
91. During the presentation of his evidence in the 2017 re-opened inquest, Essop interrupted his testimony on the afternoon of Tuesday, 27 June to lead the presiding Judge, legal representatives and representatives of the media on an inspection *in loco* on the 9<sup>th</sup> and 10<sup>th</sup> Floors as well as the roof at John Vorster Square Building.

***Inspection in loco***

92. On 27 June 2017 at 14H00, Essop led the court into the John Vorster Square Building. The inspection started off on the 9<sup>th</sup> floor where the office of Greyling had been located. There had been some slight adjustments to the structure of the offices over the years and in some respects it was not exactly as he had remembered it. However, the main parts of the building that featured in his evidence were still visible.
  
93. Firstly, the spiral stairs that start from the ground floor right up to the 10<sup>th</sup> floor, with a void at the centre thereof were still intact. When one looks down from the spiral stairs, the ground floor is clearly visible even though such exercise would leave those with phobia for heights feeling dizzy. From the 9<sup>th</sup> floor we moved to the 10<sup>th</sup> floor where in this instance, there had been little tampering with the office structures, the passages and the bathrooms. They came out exactly as he had described in his evidence, including office 1013 where he was held. The passages leading to the offices from the landing on the stairway had steel doors such as those one would find in a bank vault. These are opened by key to access the passage. There are offices on either side of the passage and internal walls built by an opaque glass wall from top halfway to the ground. The passage is about a metre and a half wide between the walls of the various offices on either side.
  
94. At the end of the passage-way there is another steel door similar to the one nearer the stairway. Next to the stairway landing there is a toilet which seems to be a feature on each floor including the 9<sup>th</sup> floor. Essop pointed out that the layout of the bathroom was not exactly the way it was during his detention. There were some slight changes.

But basically the structure was more or less the same and the measurements the same. As he entered the passage leading to office 1013, Essop made no mistake in identifying the office door as well as the office in which he was interrogated.

95. As one enters the office, there is a steel vault door to the right, opening to a small, approximately 12 square metre area vault with thick strong walls and no windows at all. The vault was as Essop had described. Higher up the walls there were two airbricks. At the time of our visit, there was a lot of stationery stored therein.
96. Essop led us into that vault and showed us the various positions in which he stood while he was being interrogated. One could not exactly see some of the walls as these were covered with boxes of stationery. However, the room was exactly as he had described it. He then pointed out a spot where he was at the time he had sight of the person he believed was Timol being carried, and walking slowly along the passage. I stood exactly on that spot as he demonstrated how he had a brief sight of Timol as he was carried with the steel door as well as the door leading to the office both open. He then simulated how Timol was carried and where I stood, I had a clear view of a person being carried on both sides as he moved on the corridor past the open door. The movement was slow and with an effort.
97. The entourage also inspected room 1026 where Timol was held. It turned out to be a very small room of 2½ to 3 x 4 metre. This, according to Rodrigues's version, is the room from where Timol fell down through the window. The particular window was still intact. The only difference in that room was the furniture as well as an external steel screen that has since been inserted along the wall of the entire building, which allows vision to the outside but would prevent any

object from falling through any of the windows of the building. It is in the shape of a steel ventilator. We then went to the adjacent room, room 1025 with almost the same measurement as room 1026, which has side a door leading to room 1024. Room 1024 also has a vault inside. On the other side of room 1026 was room 1027 which is near the walkway leading to toilets which are now described as men's toilets. They also have been renovated.

98. As the screening vent is now in place, it was not possible to have a clear sight of the spot on the ground where Timol landed. The entourage then went up the stairs through the top of the building on the outside where it was possible to see the spot where Timol fell, when one stands on top of the building just above the room 1026. The inspection went back to floor 10, where another witness Dr Jetham, who was held in either 1025 or 1027, (the offices were locked and we could not gain access), pointed out that she was interrogated therein after her arrest on Saturday, 23 October 1971. She then showed us the office that is next to the landing of the stairway on the 10<sup>th</sup> floor and near the bathroom structure. It was in relation to the bathroom structure that she was able to point out the office saying that where she was held was a few metres from the bathroom structure as she was taken there during the interrogation. She later testified that it was from that room that she could hear the screams which she no doubt believed were coming from Timol towards the direction of rooms 1026 and 1025.

99. From the 9<sup>th</sup> floor the entourage went back to the ground floor where we went to the spot exactly where Timol fell. After 45 years, there was little evidence to show that someone had fallen there. However, the spot is part of the garden landscape outside the building and has not changed very much. From then on we went to the ground floor

next to the parking where the cells are located. We could not access the cells as the officer in charge thereof was not available. We then ended the inspection *in loco* at about 16H00.

***Adv George Bizos SC***

100. Adv. George Bizos SC ("*Bizos*") practised as a senior counsel at the Johannesburg Bar but is currently employed by the Legal Resources Centre in Johannesburg. He testified as follows: He was born in Greece on 14 November 1928 and became a resident of South Africa during 1941 at the age of thirteen years after fleeing the Nazi occupation of Greece. He joined the Bar in Johannesburg in 1954 and spent his career representing victims of apartheid violations. He has been a senior member of the Johannesburg Bar since 1978. In October 2004 he was made honorary life member of the Bar.

101. During the apartheid era, he acted as counsel in a wide range of cases that came before the court. These included criminal trials of activists and inquests into the deaths of people in detention, held under various South African security laws.

102. Bizos was one of the counsel who acted on behalf of both Timol and Essop in regard to their detention as well as for Timol's family during the 1972 inquest.

103. His evidence gave an overview of the various security laws which authorised police officials in particular those attached to the security branch of the South African Police, to detain people randomly during the era of apartheid. He referred to legislation such as the Suppression of Communism Act, 44 of 1950; the General Law Amendment Act, 37 of 1963; the Terrorism Act, 83 of 1967; the

Criminal Procedure Amendment Act, 96 of 1965; and the Internal Security Act, of 1982, which existed at that time. In his evidence he pointed out that the isolation of detainees allowed for their abuse and cover-up by the police of such abuse as the police were always the only witnesses. He testified:

*“In my experience, over many years of appearing as counsel in these matters, policemen routinely perjured themselves to conceal the truth of abuse of detainees. My view has since been confirmed by the testimony of many policemen and security branch officers before the Truth and Reconciliation Commission’s (TRC) Amnesty and Human Rights Violation Committees.”*

104. Bizos recounted the number of deaths in police custody, of people detained in terms of security legislation, inquest proceedings being held in some of them. The inquest proceedings into the deaths of the detainees were usually heard by white senior magistrates who invariably accepted police explanations. These magistrates saw it as their duty to protect organs of the State, such as the police. The magistrates tended not to interrogate police versions that vigorously. By way of example, magistrates invariably never asked police the most obvious question: *“Why should the detainee commit suicide when he had the option of remaining silent under interrogation”.*

105. The families and their lawyers had considerable difficulty in probing the deaths of the persons held in conditions of total secrecy.

*“Almost without exception security branch members committed themselves to a conspiracy of silence. The detainees were not there to speak for themselves.”*

106. The other difficulty which routinely faced counsel in inquest proceedings concerning the death of a detainee would be the manufacture of false evidence by police including the presentation of false testimony. There would be a blank secrecy imposed under

security laws which was invoked during an inquest to prevent critical evidence from being disclosed. As an example, Bizos refers to the fact that Essop, who was available during the inquest in Timol's case, was kept in custody throughout the Timol inquest effectively silencing him, and preventing his highly relevant evidence from being heard by the inquest court. The only inference that can be drawn from the deliberate concealing of Essop was to prevent his evidence of torture being heard by the inquest court.

107. He then proceeded to cite other examples. Where there were civil claims brought against police, these were settled out of court first to avoid any evidence coming through during court proceedings. It therefore emerged in TRC enquiries that police routinely employed deception at judicial proceedings. In this regard, Bizos refers to the inquest dealing with the deaths in detention of Mr Stanza Bobape as well as that of Mr Steven Biko<sup>26</sup>. Bizos further refers to the collusion that would take place between the police and prosecutors, who collaborated with police to undermine cases of victims and/or their families.

108. Bizos narrated how Timol and Essop were both detained by the Security Branch in terms of Section 6 of the Terrorism Act on 22 October 1971. The allegation at that stage was that Communist Party propaganda material had been found in the car boot that Essop was driving. On that occasion, as already been stated earlier in this judgment, Timol and Essop were travelling together in a car. He further testified that:

*“A post-mortem examination of Timol's body discovered several pre-death injuries. Notwithstanding this, indisputable facts, the inquest*

<sup>26</sup>

See Volume 5, Chapter 6 Findings and Conclusions, page 221, para 100, sub-para (p) Finding on the State and Unlawful Activities, TRC Publications.

*into Timol's death found that 'No one was to blame for his death'. This finding mirrored the findings of many other deaths which occurred in detention throughout the apartheid era."*

109. Bizos' further evidence as outlined in his affidavit, gives a background as to how he came to be involved with Advocate I A Maisels SC ("*Maisels*") to represent the family in the 1972 inquest. He described the version of the security branch policemen who claimed that at all times they treated both Timol and Essop with care and consideration, indeed to the point that they spent their own money to buy them food and drinks. He states that police officers denied that they had assaulted either of the two men, or that they had observed injuries on their person. The security branch members claimed that Essop was admitted to hospital because he was malingering.
110. Bizos further recalled how the application for an interdict against the torture of Essop came to be brought. He testified that on 28 October 1971, after news of Timol's death had become public, a nurse informed Mr Ismail Essop, the father of Essop, that his unconscious son had been admitted to a non-white section of the H F Verwoerd Hospital in Pretoria at 11H00 on 26 October 1971. He had severe injuries and was in a critical condition. She said that his presence there was being kept a secret. Essop's father rushed to the hospital but was denied access to his son who was under police guard. He, however, managed to confirm by standing on a bag outside and peeping through the small glass panel, that his son lay in a hospital bed.
111. Essop's father then consulted attorneys who briefed Bizos and Maisels to bring an urgent application to allow for access to see Essop. The urgent application came before Judge Cecil Margo of the Pretoria Supreme Court on 29 October 1971. Advocate Frikkie Eloff,

(who later became the Honourable Mr Justice Eloff and Judge President of the Supreme Court, Transvaal Provincial Division), appeared for the police and handed to the court an affidavit alleging that Essop was detained under Section 6 of the Treason Act, which prohibited access to him by anyone except the Minister or an officer of the State on official duty. There was also a short affidavit supplied by Dr Hieronymus Koch, the State pathologist who had examined Essop, disputing the injuries as observed by Mr Ismail Essop. Bizos continued:

*“The police claim that Essop was suffering from hysteria. Judge Margo indicated during the course of argument that there was public disquiet and further that it would not be in the interests of justice for him to hold that the courts were powerless to assist the father’s access to his comatose son – especially in circumstances where his friend Timol had, according to the Security Branch, committed suicide by jumping out of a window. He suggested that there should be discussions, in the hope that some access would be given to the father, and that an assurance or undertaking be provided by the police that Essop would not be ill-treated any further.”*

112. Eloff requested adjournment to consult the Prime Minister after which he came back and indicated that access to the detainee would not be allowed. Judge Margo then declined to grant access to Essop but pointed out that the matter required a thorough investigation before a final order would be made. Essop’s counsel then requested to file further affidavits and the matter was postponed. The Deputy-Sheriff was prevented from even serving Essop with the court order. The order had to be delivered by the Registrar of the Court.

113. Attempts to approach the nurses for evidence did not yield any result as all nurses had been told not to tell anyone about Essop and

consequently could not make any statement on the matter. The police disclosed that they had had three neuro-surgeons examine Essop. Bizos recounted that one of them, Dr Louw, testifying in court, was cross-examined by Maisels who asked as follows:

*“Dr Louw, did you see Mohammed Essop, our client’s son?”*

*“Yes.”*

*“Did he have any injuries?”*

*“Lots, I can do no better than read the letter that was sent to me by Dr Dennis Vermont Kemp, the district surgeon, who listed sixteen injuries.”*

114. This revelation led to Kemp, who was a district surgeon in Johannesburg, being summoned telephonically to come to court that very morning. The Judge ordered as such and Kemp came to testify. Dr Kemp had difficulties explaining to the court as to why he withheld or failed to disclose evidence of injuries on Essop. After hearing the matter, the Judge rejected the evidence of Colonel Greyling who was the Second Respondent in the application, denying that Essop was not assaulted. The Judge found that Essop was indeed assaulted and granted the interdict preventing any further assaults on him. In rejecting Greyling’s version of events, the Judge described him as been less than honest and stopped short of declaring that he lied to the court.

***Professor Kantilal Naik***

115. Professor Kantilla Naik is a retired Professor of Applied Mathematics at the University of Witwatersrand. Naik testified as follows: He started lecturing at the university during 1970’s and had retired just

two years ago. He testified that he knew Timol because the two of them lived in Roodepoort together and taught at Roodepoort Indian School. He taught science while Timol taught history and commercial subjects.

116. Naik was arrested on Saturday, 23 October 1971. The police demanded that he accompany them to the Roodepoort Indian School where they seized his typewriter. Later at 11H00 the same day the police came to the pharmacy where he was doing part-time work and took him to his home where they searched his room and told him that Timol had identified him as someone he was *trying* to recruit. He testified that he did not know that Timol was a communist and heard this from the police. He was then taken to John Vorster Square on the 10<sup>th</sup> floor and made to stand for many hours before they began assaulting him for information. He too had been detained under section 6 of the Terrorism Act.

117. Naik stated in his affidavit that he was not involved in any political activity. Throughout his detention he experienced assaults in the form of being punched several times and as he fell down they lifted him up and continued punching him. The Security Branch then applied what they called the helicopter method of torture on him. This they did by tying his hands with a rope and slipped the ends in front of his knees. Thereafter they then put him on a broom stick in between his elbow and knees. He was then suspended on the broom stick between two tables and two chairs. They then assaulted him in that position as they rotated him on the broom stick that was suspended between two tables or chairs. He suffered extreme pain and when they finally released him from that position, he had lost all mobility in his hands. His hands and wrists were completely numbed. He was deprived of any sleep and they only took him to a cell the next

morning (Sunday morning) where he was left for some time. He had been so tortured that he could not do even simple tasks such as washing himself. He was kept in solitary confinement.

118. On Monday 25 October they took him to a General Coetzee who later became Commissioner of Police. He was in the presence of the district surgeon, Kemp, who examined him in a lift. After that consultation Naik was then given physiotherapy and electrical treatment to repair the damage to the muscles in his hands. That treatment took almost three and a half months. From then the only time they took him up on the 10<sup>th</sup> floor was when they needed to question him or to apply the treatment of physiotherapy as well as electrical massaging. The members of the Security Branch who tortured him were later removed during the remaining period of detention. Naik recalls telling a magistrate about his injuries during the latter's visit. The magistrate sent some people to take statements and he was later taken to Newlands Police Station to lay a charge. On return to John Vorster Square, members of the Security Branch were not impressed and made threats to him to withdraw the charges.

119. Naik was held at John Vorster Square for six months. He is of opinion that the reason why he was held so long was that the police wanted to make sure that his hands were healed before he could be released. During the period of six months, however, he was held in solitary confinement where he was not allowed contact with anybody, including legal counsel. It was during this period that he came to hear of the passing of Timol.

120. He also complained about the food as he told them that he was a vegetarian and this also made the police angry. The Police became aggressive and they verbally abused him. During his interrogation, he

was told that they are rounding up Indians who were the backbone of the struggle against apartheid. The police told him that the Indians were trying to make Africans politically aware and for that reason they need to be taught a lesson. He was referred to as a communist.

121. After four and a half months he was told that he will be released but will be used as a State witness against certain people. In this regard, the Security Branch wanted assurance from him by way of an affidavit, which he was pressured to sign, that he would not reveal the torture that they had inflicted upon him nor even tell his wife. The police even warned him about divulging what transpired during his detention, to the media. He was forced to make several statements to the police.

122. By the time he was released, the police had instilled an enormous amount of fear in him. He was afraid to talk to people and many became suspicious of him. They held the view that since he had been released from detention, he might be an informer of the Security Branch. That, he testified, was the worst kind of torture that he endured. The police fed on this perception by spreading false rumours that he was their informer and that his colleagues should be very careful of him.

123. Naik denies that he was an informer for the Security Branch. He points out that if that had been the case, his life would have been easier and the several passport applications which he made would not have been rejected. He would not have been overlooked for promotion at work and would have easily secured better paying work with significantly more benefits.

124. Prior to his detention; he had support from the community, which support changed after his detention. It hurt him. Naik recounted that 3 days after his detention, his daughter was born and people did not readily come to the assistance of the family because they did not want to be implicated. This ostracism continued several years after his release. He was subjected to harsher conditions as people in the community did not trust him. At some point, a neighbour claimed that he was an informer for the Security Branch. He was even told that the police should have thrown him out of the 10<sup>th</sup> floor of John Vorster Square Building instead of Timol. This view was reinforced by the fact that even after his release, the Security Branch kept visiting and harassing him and his family.

***Mohammed Timol***

125. Mohammed Timol is the brother to Ahmed Timol. He commenced his evidence by informing the inquest how he related to his brother as they grew up, with the age gap between them being seven to eight years. Of importance, he painted a picture to the inquest as to who Timol the person was, as he knew him. He further narrated the history of Timol and how he grew up with Timol and saw him leaving the country and on his return participating in political activities. Timol had received training under the leadership of Dr Yusuf Dadoo, who in exile served as the National Chairman of the South African Communist Party as well as Vice Chair of the Revolutionary Council of the African National Congress. The details of this part of the evidence appear under the heading "*Background*" in this judgment.

126. Mohammed also joined the struggle against apartheid. He had followed Timol to London where he was also trained under the auspices of the ANC and the SACP, to distribute leaflets by way of

leaflet bombs. After his training in London and before he returned, he met Dr Dadoo who gave him a message to his brother Timol, that they had not heard from him for sometime. He requested him to convey to Timol a message that he should inform them that he had not been detained and was safe.

127. On his return to South Africa he was fetched by Timol from the airport. He delivered the message to Timol. The very following day he was ordered by his mother to go and have a haircut. On his return from the barber, his mother informed him that members of the Security Branch had come to their home looking for him as they had previously done while he was away. Mohammed told Timol what happened when he returned from school. Timol advised him to go and see them. He testified that he went to the Security Branch offices in Roodepoort and on arrival he was told that in fact they were looking for Timol and not him. He conveyed that message and he says he could see that Timol was worried. On 17 October, Timol informed him that they were both under surveillance and suggested to him that he should go to Durban. The following day on the 18<sup>th</sup>, Mohammed left for Durban. That was the last time he saw Timol alive. When he last saw Timol, the latter was in good health with no injuries.

128. On 25 October at about 08H30 while he was staying with students in a flat at Himalaya Heights in Warwick Street in Durban, he was woken up by six Security Branch officers who stood by his bedside. The police aggressively enquired if he was Mohammed Timol and thereafter arrested him. One of the police was Lt. Naicker, a member of the Security Branch. The only person who knew that he was in Durban was Timol who had probably told the police. After taking him to the offices of the Security Branch, the police informed him that they

have also detained his brother, Timol. Thus began the interrogation and torture.

129. During the interrogation he was made to stand on a brick and to hold up two telephone directories for hours. He was repeatedly beaten up whenever he became unsteady on the bricks or lowered the directories to rest his arms. At all times he was in the company of Security Branch officers and was never left alone. He was then taken to Berea Police Station where he was locked up. The next morning he was taken to Fischer Street, for interrogation again. The beatings continued, including being made to sit on an imaginary chair. The interrogation continued until Wednesday evening when they abruptly stopped. Everything went quiet and he was taken to his cell in the Berea Police Station.

130. The following morning on Thursday 28, three Security Branch officers gave him a paper and pen and instructed him to tell the truth otherwise he would rot in jail. He did not write anything on the paper. On the same day in the evening, Lt. Wessels came in and told him that Timol had died. When he asked him how he died Wessels informed him that he was not aware what happened as they were still waiting for more information from Pretoria.

131. On Friday 29 October as he was being driven back to the offices of the Security Branch, he read on a headline poster "*Death Plunge, Vorster speaks*". This caused him to recall how Babla Salojee, who had been interrogated by a Security Branch officer, Rooi Rus Swanepoel, and had plunged to his death at Grey's Building. As they exited the lift at the building of the Security Branch, one of the officers expressed his condolences to him for the death of his brother. Later that day he was taken back to Berea Police Station where he spent

the entire weekend. For a few more days after the weekend, he was taken back and forth to the Security Branch offices at Fischer Street and at one point was forced to sign a statement on what he had told them during the interrogation. After that, he was taken back to police station Berea where they never came back for him again.

132. On 30 November 1971, Naicker and Wessels woke him up and informed him that he was being taken to Johannesburg. He was allowed to wash his face and gather his things. He was driven to Johannesburg while handcuffed to a handle in the police car for the duration of the trip. They left Durban at 01H00 in the morning. On arrival in Johannesburg, which was the early morning hours of 1 December 1971, he was taken to John Vorster Square where he was locked up in a cell. He continued to be detained under Section 6 of the Terrorism Act. Each day he was taken outside for thirty minutes exercise. After a month he was given a Quran in its translated form and later the bible and Bhagavad Gita.

133. On 14 March 1971, Mohammed was taken to the office of Greyling who informed him that he was been released and he could go home. However, he was told that he had to go and see the CID investigating officer Major Fick who was tasked with the case relating to Timol's death. When Greyling asked him if he had complaints, he told Greyling about his assaults and beatings by the police officers, which evoked a response from Greyling "*with the uttering of expletives, telling him to get out of his office.*" He was then taken to Fick who asked him about Timol, whether he had any mental issues that would cause him to commit suicide. He denied this and told Fick that Timol was fit. Fick and another officer then took him home to Roodepoort.

134. After his release, Mohammed continued to participate as an activist in the struggle and was later detained under Section 10 of the Internal Security Act<sup>27</sup> on expiry of which he was released and handed a house arrest order which restricted his movement and banned him from participating in political activities for a period of five years and banned from receiving any visitors at his home or being seen in the company of more than one person at a time. He was also restricted from leaving his home during working days from 6 am and return by 7 pm. He was only allowed to leave his home on Saturdays from 8 in the morning until noon. Thereafter, he was expected to remain home for the rest of the weekend.

135. On 1 January 1978 he left South Africa without a passport and made his way to Swaziland. He became a full-time functionary of the ANC based in Mozambique and Zambia. He underwent military training under the auspices of the ANC and in April 1990 after the unbanning of the ANC, he was part of the delegation that went to Cape Town for the Groote Schuur talks with the apartheid government.

### ***Dr Dilshad Jetham***

136. Dr Dilshad Jetham (*"Jetham"*) is a Cardiologist practicing as a physician on a *pro bono* basis. She testified thus: At the time of her arrest she was 22 years old. She was a second year medical student at Wits. She and Essop attended Roodepoort Indian School and were contemporaries. Timol was older than her. She knew him as a family friend who later in Grade 10 became her history teacher. Her family and that of Timol lived a few blocks apart and she and Timol knew each other well.

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<sup>27</sup> Act 138 of 1991.

137. She was arrested late in the afternoon on Saturday, 23 October 1971 when she arrived home from university. She was taken to John Vorster Square and escorted to the 9<sup>th</sup> floor of the building. She was first taken to Greyling's office on the 9<sup>th</sup> floor where she was given a pen and paper to write her role in political activities. Each time, Greyling threw the paper in the waste basket and refused to accept what she wrote. She was then taken to an office on the 10<sup>th</sup> floor where her interrogation and torture began. She was interrogated and tortured by white male officers. She testified that where she was held, she could hear the "*Athaan*" (the Islamic call to prayer) from the Newtown Mosque nearby. It was this early morning call to prayer that helped her to keep track of the days during her interrogation. She described the period as being that of Ramadan (holy month of fasting, introspection and in prayer for Muslims). On sunset she needed to break her fast and was only given a glass of water to do so.

138. She was asked questions, made to stand and not allowed to go to the bathroom on request. The white male officers hurled insults at her and filled water up and made her drink so that she would have to relieve herself whilst fully clothed again and again. Later the police brought her a mop and a bucket and made her clean up her urine. She was made to stand on the bucket without shoes and to relieve herself in the bucket. She was deprived sleep and shouted at the whole day. She was interrogated by different sets of police including one Lt. Swanepoel. They accused her of being a communist and later they attached to her finger a device that electrocuted her. This electrocution was also repeated on her back with a higher voltage. That caused her to pass out.

139. She recognised Timol's screams emanating from another room which was not far from where she was interrogated. She had no idea in

which room Timol was being interrogated, but it was nearby. Timol's screams continued on Monday night. She recognised his voice. On Tuesday, 26 October late in the afternoon she was taken down for a cold shower, and she changed into clothes that her family sent to her. She continued to hear screams from the other rooms as she was slapped across the face. At some point she passed out and was woken up in spite of her exhaustion and the assaults.

140. The interrogation continued. She heard Timol screaming and begging for them to stop, even crying at some point. It was the whole night and at dawn the screams suddenly stopped. There was dead silence. She then saw frantic activity on the 10<sup>th</sup> floor with officers scurrying around madly. Things appeared to have changed. She recalls that this incident occurred at dawn because it coincided with the call to prayer she could hear coming from the Mosque.

141. At around 06H00 in the morning on 27 October she was moved to a cell on another floor on the same building. She was held in the cells and given a tablet which caused her to hallucinate. She was later taken to the 10<sup>th</sup> floor where she met one officer named Pitout who demanded that she make a statement in return for immunity. She was intimidated into making the statement to testify against Essop and Amina Desai. On her release she denied the statement at trial and later the police continued to intimidate her through repeated visits even at University.

***Mr Ernest Matthis***

142. Mr Ernest Matthis (*"Matthis"*) is a retired advocate who practiced as such during 1971. He testified as follows: On 27 October 1971 he was at the John Vorster Square offices in Johannesburg, preparing to

prosecute a case together with a colleague, a senior counsel. While they were in the office room, he saw through the window, a body of a person falling downwards. He then rushed to the window and looked down and saw the body lying on the ground where it had landed. He then looked up to see where the body was falling from and he saw that all the windows were closed.

143. He then called Mr Harry Schwartz, a Member of Parliament at that time, to inform him about the incident. He later learned that the body was that of Timol. He and his colleague were working on either the 4<sup>th</sup> or 6<sup>th</sup> floor of the building when he saw the person falling, facing away from the building. When he informed Mr Schwartz about the incident, Swartz told him that this announcement would cause some consternation in government ranks. He did not see any police rushing to the body or any ambulance being called. He does not remember at what time he saw the person fall, however if he were to take a guess it would have been in the morning.

***Mr Paul Erasmus***

144. Paul Francois Erasmus ("*Erasmus*") is a former member and Warrant Officer of the Security Branch of the South Africa Police. He testified thus: He joined the South African Police in 1975 in order to avoid conscription. Two years later in 1977 he was deployed to the Security Branch. His task at the Security Branch was to produce propaganda material that would counter the organisations and activists opposed to apartheid.

145. He forged signatures of prominent people, prepared and issued pamphlets carrying messages aiming at discrediting leaders of the anti-apartheid organisations. He was involved in the bombing of

buildings of anti-apartheid organisations including that of the Congress of the South African Trade Unions (“COSATU”).

146. He witnessed detainees being tortured where different methods of torture were used. These methods included administering electric shocks, assaulting detainees and subjecting them to sleep deprivation. The sleep deprivation was the first method after a detainee was arrested so as to break the detainee by subjecting such detainee to long hours, sometimes even three days without sleeping. This would be achieved by sending interrogators, mostly in pairs on a rotational basis. At some point he too was roped in to assist in this practice.
147. Police got away with criminal activity including death in detention, with the aid of what he termed “*resident sweepers*”. In this regard, he identified a Brigadier Grobler assisted by Gloy (who at that time had been promoted to Lt Colonel), together working as a unit. This unit assisted members of the Security Branch to escape liability for their criminal acts, by removing or sweeping away evidence implicating them. Whenever the police were accused of torture, the sweepers were brought in to conceal the evidence to the extent that very few police were in fact charged.
148. Some magistrates, sometimes state pathologists and prosecutors played along and ensured that the culprits escaped justice. This protection of criminal activity on the part of the Security Branch also entailed holding mock trials where witnesses would be coached and made to rehearse evidence. Some of the police would then be asked to role play advocates questioning these witnesses to enable them to avoid being adversely cross-examined.

149. After the death of Neil Aggett, (*“Aggett”*), he was called in to assist in manufacturing evidence that would support a false version that Aggett committed suicide. He and another police officer went to Aggett’s home where he broke in, being under the impression that there was no one. It was while he was in the house looking for any evidence that they could use to support the version of suicide that the family helper came in and accosted him. The fact that he was caught became public and he was called in for reprimand by the police.

150. Later he was called in by the Sweeper Unit, where he was informed that he should accept responsibility for a minor offence of trespassing in which instance it has been arranged that he would be levied a fine of R200.00. They would take care of it. He was then sent to court in Cape Town to stand trial. On arrival all other charges were dropped and the magistrate imposed a fine of R200.00 for trespassing. The fine of R200.00 for trespassing was paid by the police from a secret fund.

151. He also participated in the bugging of the telephone of Bizos, issued pamphlets discrediting Mrs Winnie Mandela and pamphlets misleading people about leaders of the Alexander Action Committee, including their prominent member, Mr Mayekiso.

152. He testified before the Truth and Reconciliation Commission (TRC) to reveal the illegal activities of the Security Branch and his role therein.

***Ms Stephanie Kemp***

153. Stephanie Kemp (*“Kemp”*) is a former detainee and exiled political activist. She testified as follows: She was arrested by the Security Branch and held in detention where she was assaulted and her head

slammed on the floor until she became unconscious. She was accused of being a member of the South African Communist Party and committing deeds of terror. She eventually fled to the United Kingdom where she continued her work with the underground structures of the South African Communist Party. She never met Timol in person but knew of him and coordinated communication with him when he was back in South Africa as leader of an underground SACP cell. The communication was routed via friends in London with encrypted messages.

154. Kemp emphatically denied that members of the SACP were instructed to commit suicide once they find themselves in incarceration. She also identified inconsistencies in the content of Inkululeko / Freedom No 2 pamphlet dated 2 February 1972. She pointed out that the reference to "*Communist Party of South Africa*" was a give-away in that her party was known as the South African Communist Party. The language used in the pamphlet was not consistent with the language that they would use as members of the Communist Party. No member of the Communist Party would make reference to names of people in correspondence. Reference to prominent people such as Adv. I Maisels, George Bizos and Soggot would not have been used. Besides, these were not members of the South African Communist Party at that time.

***Professor Kenneth Bollard***

155. Professor Kenneth Bollard. ("*Boffard*") is a Professor Emeritus and Honorary Consultant Surgeon, Department of Surgery at Wits. He is also a Trauma Director at Milpark Hospital Trauma Centre, Wits. He has served as a visiting Professor at various international institutions. He is an expert witness who was called to testify, having

studied the autopsy report of Schepers. In his opinion, it was not correct practice and procedure for the police to remove the body which had sustained serious injuries after falling from the 10<sup>th</sup> floor of a building. The ambulance and para-medics should have been summoned. He agreed under examination that the mere removal of the body might contribute towards the demise of a patient who had sustained such injuries. In his opinion, the police should have put the body to lie on the side so as to promote breathing.

***Mr Essop Pahad***

156. Mr Essop Pahad (*"Pahad"*) is a former Minister in the Office of the President and cabinet member in the Government of the Republic of South Africa. He testified thus: He grew up in a family that was involved in politics. He left the country and went to settle in London in exile. He was staying in London when Timol and later Mohamed Timol came to stay with them. He informed the Court that he is the person who actually recruited Timol as a member of the South African Communist Party then operating underground in London. He also arranged for Timol to undergo further training in the Soviet Union and then back to London. He also introduced Timol to other members of the SACP in order for Timol to get political education.

157. Pahad denied that members of the SACP were advised to commit suicide in case of arrest and detention. On the contrary, he testified that members were trained to endure torture in the first forty eight hours of arrest before they can release names of other people associated with them. That would have then granted those people time to go into hiding and evade arrest.

158. Pahad further denied that the last paragraphs under the heading “*Stand Firm*” were part of the document with the title “*Inkululeko Freedom dated February 1972 Issue No. 2*”. Like Stefanie Kemp, Pahad pointed out the obvious mistakes that appear in the concluding paragraphs under that heading of “*Stand Firm*”. He denied that that would have been a message by the SACP. He stated that one of the obvious mistakes is the mentioning of names of individuals as well as reference to the party at the end as the Communist Party of South Africa. He pointed out that the Communist Party of South Africa was disbanded in the 1950’s when it was banned in South Africa. At the time Timol was in London and came to be in South Africa later, the name of the party was and had always been the South African Communist Party.

***Dr Shakeera Holland***

159. Dr Shakeera Holland (“*Holland*”) is a Senior Specialist in the Department of Forensic Medicine and Pathology at the University of Witwatersrand. She has local and international qualifications and experience. She testified thus: She reviewed the post mortem report on the body of Timol which had been performed by Dr Schepers, a Senior State Pathologist. She pointed out that the report mentions and correctly so that the cause of death was multiple injuries. She then identified the injuries on the body of Timol which occurred as a direct result of the fall. The impact on the body on the surface on which it landed and on the body by any intervening surfaces that collided with the body as it fell; transmitted forces extending from the areas of impact; and the acceleration/deceleration and rotational forces that acted on the body during the fall as a result of gravitational force.

160. Holland identified a number of wounds that could not be attributed to the fall from the height. There were multiple external wounds which show scab fermentation indicating that the wounds were present before the fatal fall and were not caused by the fall. These included multiple abrasions with scab formation over the middle third of the right clavicular (*collar bone*) area; an abrasion with scab formation on the right scapula (*shoulder blade*); A small abrasion with scab formation on the left lateral neck situated 3cm below the ear lobe; and a 2.5 cm x 4 mm abrasion with scab formation across the left forearm.
161. According to her evidence, the histological analysis showed that the wounds sampled were between four to six days old. She opined that according to analysis done by Dr Schepers, in at least five of the sections sampled from the various skin wounds, the findings were consistent with wounds of four to six days old. Dr Gluckman concurred with this finding.
162. Holland went on to list the injuries as observed and stated by Drs Schepers and Gluckman and concluded her medical opinion as follows:
- a. She concurred with the cause of death as multiple injuries consistent with a fall from a height;
  - b. In her interpretation of the Inquest medico-legal report, there were injuries that were unlikely to have been sustained from the fall. The implication is that these injuries must have been present prior to the fall and were sustained during the time that the deceased was in police custody and they included:

- The multiple external wounds with scab formation. Histological analysis on these wounds indicated that there were many wounds that were sampled which were estimated to be four to six days old, confirming that these wounds were present before the fall from the height.
- The multiple bruises and facial fractures, including the nasal bone; left orbital ramus; right inferior orbital ramus; fractures of the right upper jaw, left upper jaw and left lower jaw, all of which did not appear to be related to the base of skull fracture sustained in the fall.
- The isolated depressed skull fracture which is a rare in a fall from a height.
- The tear of the soft tissues around the hyoid bone.
- The fracture of the first rib.

163. In her opinion, Holland concluded that some of these multiple injuries, in particular that on the 1<sup>st</sup> rib, indicated that force would have been applied to cause the injury. She opined further that these injuries present on the body of the deceased, which could not be ascribed to the fall from the height, indicate that the deceased sustained physical assault while in police custody prior to his death.

***Professor Steve Naidoo***

164. Professor Steve Naidoo ("*Naidoo*") is an independently practising forensic pathologist with 34 years' experience in academic and practical forensic pathology. Naidoo has extensive qualifications

having served as an Associate Professor and Honorary Research fellow at a school of law. Unlike Holland who based her opinion on the medico-legal report, Naidoo studied the evidence of Rodrigues as summed up in the judgment and that of GJ Deysel of the Security Branch who removed the body after the fall. The doctor further noted that there were shortcomings in the original inquest report such as lack of x-rays of fractures, lack of drawings of skull fractures, lack of measurements of wounds except one lesion and generally, absence of detail on surface wounds and internal injuries.

165. Most importantly, Naidoo commented on the reliance on histology to make a determination of the age of wounds. He acknowledged that conventional histological wound age determination remains the basis of all wound age diagnostics. He however cautioned that the age estimation of wounds is never accurate as might be desired for any particular case.
166. Naidoo also differentiated between the pre-fall and fall related injuries. He concluded after listing the two categories that wounds number 8 to 35 on the translated version of the autopsy report were *ante-mortem* and thus could not have been caused by the fall from the building. More pointedly, Naidoo singled out the injuries on the calf of the deceased's right leg, exhibiting extensive bruising/contusions and dislocated left ankle and degree of bruising, as neither directly nor secondary to the fall. He further included in his observation that the depressed fracture at the left parietal bone fracture of the lower jaw and deep scalp bruising at the left occipital area, cannot all be attributed to the fall.
167. The doctor concluded as follows: that the deceased was alive at the time of the fall; that he struck the ground with his forehead and the

right shoulder/elbow/chest as the primary points of impact; that the right shoulder and elbow impact transmitted the force of that impact to the right side ribs, diaphragm and liver as well as left side rib; and that the deceased would have survived less than ten minutes after the fall.

**Mr Don Foster**

168. Mr Don Foster is an author of a publication with the title “***Detention and Torture in South Africa, Psychological, Legal and Historical Studies.***” He co-authored the book with Dennis Davis and Diane Sandler. He testified about the research undertaken on this subject, which included the historical considerations, legal considerations, psychological investigations, the empirical study, the process of detention that is detainees’ descriptions and finally, interpretations and recommendations. In the publication, the authors make reference in Appendix L, the statistics of official and unofficial number of detentions between 1974 and 1985. In Appendix M, the authors list the names of the persons who died in detention from September 1963 to 6 May 1985. Timol appears in that list as having died on 27 October 1971.

169. The publication has been useful in revealing the extent to which torture in detention and in particular deaths resulting from such torture have occurred in South Africa. The authors attribute this state of affairs among others to a legal framework which permitted such torture, in the form of various pieces of legislation that gave the police the authority, without legal scrutiny, to randomly detain and torture detainees. The publication also point out the fact that the police somehow avoided been held to account or prosecuted for these atrocities.

170. The list of persons who died in detention as stated in Appendix M amount to 64. The majority have died between 1976 and 1977.

***Mr Frank Kennan Dutton***

171. Mr Frank Kennan Dutton (*“Dutton”*) is a private investigator and a highly decorated and experienced retired police officer. He has investigated a number of cases involving police atrocities locally and abroad, including on behalf of the TRC. He was the first head of the Elite Scorpions Unit which was disbanded. He testified as follows: The Police Department was divided into three sections. The first section which consisted of the largest number of police was the uniformed police. This group was followed by the Criminal Investigation Department and the third being the Security Branch. He recounted how the Security Branch was a law unto themselves and corroborated Paul Erasmus in regard to the tendency to cover up unlawful conduct on the part of the Security Branch. The investigation into Timol’s death was not objective and independent. Buys was appointed to investigate the death of Timol. Before his investigation started, he had already told the media that Timol had committed suicide. This, according to Dutton, was a demonstration that his mind was already made up and that he was not impartial in his investigation.

172. Dutton further mentioned the following factors in support of his contention that it was a cover-up namely:

- a. There were no statements taken from members of the Security Branch who were on the 10<sup>th</sup> floor or other floors of the building who could have witnessed the incident, including black members of the Security Branch;

- b. There was no investigation that would have led to a disciplinary enquiry for members of the Security Branch who failed to prevent the fall from the 10<sup>th</sup> floor of Timol.;
- c. The body of Timol was removed rapidly from the scene without any forensic investigation including markings where the body fell and the photographs of the body in the position in which it was found;
- d. There was no forensic investigation in an attempt to obtain evidence relating to possible blood samples in room 1026 as well as fingerprints and other evidence in 1026 and on its window; and
- e. The failure by the Magistrate to recognise and accept that there were already instances of persons who died in police custody where police denied having assaulted the said victims.

173. Dutton further testified that in regard to Rodrigues, on whose version the magistrate relied, there were some unanswered questions about his conduct. Firstly, he was an administrative clerk who was not part of any interrogation team. However, on his version, the police concluded that he would be capable of standing guard on Timol whom the police regarded as “*a big fish*”. Secondly, Rodrigues already had a record of a previous conviction of perjury to his name. Thirdly, his personal file records the date of his resignation from the police as two days after the delivery by the magistrate of his finding that there was no police person to blame. Fourthly, Rodrigues was handed a letter of commendation for exemplary services by the

Commissioner of Police. This, according to Dutton, who corroborated Paul Erasmus, was highly unusual and would occur in very exceptional circumstances. Commendation from the Commissioner was reserved for members of the Police Service who had distinguished themselves very well. There was no indication on Rodrigues' record that he deserved such accolade.

174. With reference to experiences gained from his work with the TRC, Dutton completed his evidence by reiterating that the version of the police as presented to the 1972 inquest was a cover-up.

***Mr Tivesh Moodley***

175. Mr Thivash Moodley is an Aeronautical Engineer with 19 years' experience in trajectory calculations in aerospace, defence and vehicle dynamics. He testified thus: He made calculations, using the existing data available and the eye witness account of Adv. Matthis to measure the trajectory of Timol's body in terms of its fall from the 10<sup>th</sup> floor to the ground shrubs in order to analyse whether the late Timol had jumped or was pushed or thrown from the 10<sup>th</sup> floor or was pushed or thrown from the roof of the building.

176. Moodley commenced his calculations by giving a detailed description of the window of room 1026 through which it is alleged by the police that Timol jumped. He describes the window as such:

*"The window that the late Mr Timol allegedly fell out of can be described as a steel window that opens at a 90 degree angle to the frame and had a hinge point approximately 27cm from the right upright edge of the window frame. The window pane had a rotating lever fitted to it that left the window pane to the window frame that resulted in the window opening clockwise from left to right. In the open position the window pane was kept open using an expanding*

*lever that braced the pane against the frame so that the wind could not blow the window closed when it was opened.”*

177. The Court agrees that the description of the window above is exactly as the Court observed it during the inspection *in loco*. Moodley continued to state that given the position of the window, the dive option is not possible. He opined that it would not be possible to run, open the window and dive simultaneously. The dimensions of the window frame are 155cm x 71cm width. He concluded that that would be challenging. He then proceeded to make calculations based on the versions of witnesses including Rodrigues who testified that Timol jumped out of the window; police officer Deysel who testified having found the body of Timol lying perpendicular to the building with the head pointing towards the building and the legs towards the road in some shrubbery; Matthis evidence that he witnessed the body as it was falling, as well as the finding in the medical reports.

178. Moodley worked out six scenarios as follows:

- a. *Scenario one:* where Timol is said to have jumped through the window, using two legs to generate force, feet first perpendicular to the building. In this scenario, Timol would have landed 13 meters from the building.
  
- b. *Scenario two:* where Timol stepped through the window, feet first perpendicular to the face of the building. It is projected that he would have landed 4 meters from the building, with his head facing away from the building;

- c. *Scenario three:* where Timol, being placed on the window sill in a sitting position and then pushed out of the window at the shoulders. This would have resulted in Timol somersaulting through the air and landing as Deysel describes, 3 meters from the building.
  
- d. *Scenario four:* where Timol, being carried to the window, with his body facing the building, his legs carried out and then the rest of his body pushed out of the window, feet first so that his trajectory would result in him falling with his head pointing in a northerly direction and his body landing in the orientation described by Deysel. He would have landed 3.1 meters from the building.
  
- e. *Scenario five:* where Timol is being thrown from the roof of the building with a horizontal motion with the torso parallel to the face of the building, typical of two people holding a body at the feet and hands and swinging it to launch it off the building. He would have landed 4 meters from the building; and
  
- f. *Scenario six:* where Timol is being rolled from the roof of the building with the torso parallel to the face of the building and the body flying horizontally down past the building, typical of somebody who is incapacitated to stand on their own strength and was placed on the parapet wall of the roof and rolled/pushed off the side of the building. He would have landed 1,25 meters from the building.

179. Having taken the Court through the calculations, Moodley concluded as follows:

- a. Using scenarios one and two, it is shown that if Timol jumped, he would have landed between 4.5 metres and 13 metres away from the building. This is based purely on his internal muscle condition thrusting him forward. In this instance, Timol would have most likely landed with his head in the direction of Commissioner Street. Using the witness' statements it is unlikely that Timol would have jumped;
  
- b. Using scenarios three and four that predict how the body lands as per Deysel's statement, the instances indicate that the body, if pushed from the windowsill, either forward whilst the body was in a seated position on the windowsill or legs first and then the remainder of the body pushed out with the face and stomach towards the building, the body would have landed in the same vicinity and orientation described by Deysel; and
  
- c. Using scenarios five and six, this predicts how the body falls and lands. As Matthis witness' account of trajectory, it means that Timol would have had to exit the window in the direction of the motorway with his body parallel to the building. Taking into account that the window pane opens from left to right, the window pane and glass would have prevented Timol from exiting in the orientation that Matthis saw him fall.

180. Moodley concluded his testimony by stating that based on his conclusions; scenarios 3 and 4 are the most likely scenarios where Timol was pushed. If Matthis's version is followed, with no open window when he looked up, the fall would be in line with scenarios 5 and 6, having being thrown from the roof top.

**Mr Neville Els**

181. Mr Neville Els is a former Warrant Officer attached to the Security Branch of the South African Police, specialising in explosive devices. He testified thus: He was on standby on Friday, 22 October 1971 when he was called to Newlands Police Station. On his arrival there, he was shown a box containing pamphlets of the South African Communist Party which were in the boot.

182. Prior to that he had been aware of the dissemination of banned pamphlets and literature through the use of an explosive device. His involvement in the case was in relation to that. He saw Timol and the other detainee shortly at Newlands Police Station before they were taken away by other members of the Security Branch. From then on he did not have any dealings with Timol.

183. Asked whether he knew anything about the assault on detainees, Els stated that he had only heard from the media that detainees were assaulted. He himself has never witnessed this. He was further shown police records which indicated that on the evening of Saturday 23 until Sunday morning, 24 October when Naik was subjected to torture through the "*helicopter method*", Els was one of the interrogators. His response to that evidence was that he could not recall. In fact, throughout his evidence, his response to questions was that he could not recall any of the instances put to him. It was later put to him that he could have been one of the interrogators of Timol as evidence showed that they changed teams during interrogation. He responded that he could not recall.

***Mr Joao Anastacio Rodrigues***

184. Rodrigues is a former Sergeant attached to the Security Branch of the South African Police and stationed at Compol Building in Pretoria. He had also testified during the 1972 inquest. In this court, he repeated the version which he stated to the 1972 inquest. The version was that he was requested by Captain Gloy to deliver their salary cheques while they were at John Vorster Square on the afternoon of the 27 October 1971. He testified that he went to John Vorster Square, and was escorted to the 10<sup>th</sup> floor where after waiting for a while he was then allowed to enter room 1026. In the room he found Captains Gloy and Van Niekerk in the company of a person who was facing Gloy and with his back to Els. He later learned that this person was Timol.

185. Prior to entering room 1026, he was requested by another male police officer who had a tray of three cups of coffee with him and asked that he should enter the room with those cups. The coffee mugs were meant for the three occupants in the room. While he was standing in the room next to the seated Timol who was not doing anything, an unidentified police officer came in and mentioned that they have identified and arrested some 3 people including Quentin, Martin and Henry. He, together with the two Captains, noticed that Timol was extremely shocked when he heard Mr X. He had a shocked look on his face and his eyes were big. He shook his head from side to side while looking at Gloy and Van Niekerk.

186. Gloy asked him to stay with Timol while he and Van Niekerk went out to check the information they had just received. He, Rodrigues, came around a table to sit opposite Timol. Not long after the two Captains had left the room, Timol requested him to go to the toilet and as they both stood up, Timol started moving to his left around the table while

Rodrigues was also moving to the left to push into the table the chair on which Van Niekerk was sitting. As he was doing this, he witnessed at the corner of his eye Timol rushing to the window, opened the window and jumped through it.

187. According to Rodrigues, before Timol could completely jump out of the window, he tried to stop him by moving in the direction where he was seated but stumbled on the chair on which he was sitting and fell on all fours. He could not stop Timol from jumping through the window. By the time he stood up Timol had jumped through the window and then he rushed and looked down below, he saw Timol's body on the ground. He then rushed onto the corridor screaming that someone jumped through the window. Other police officers came out of their offices on that floor and went back with him to look through the window. It was at that stage that one of the officers identified himself to him as Colonel Greyling. He went down with him to the ground floor through the lift where he saw some police officers feeling the pulse and he assisted to carry the body into the reception. He later learned that Timol had died.

188. Rodrigues, to everyone's surprise, added to his evidence an event that he admitted not to have disclosed to the magistrate during the inquest in 1972. He stated that during the time he was making a statement to Buys, the latter requested him to include in his statement an allegation that prior to Timol jumping through the window, he had wrestled with him. He refused to do so. He added that Gloy and Van Niekerk had also unsuccessfully approached him with a similar request prior to him making the statement. Consequently these officers together with others he could not remember were present in Court when he testified and he felt intimidated. For that reason, he

did not inform the magistrate about the attempt by the officers to get him to lie in his statement.

189. During questioning, Rodrigues conceded that he was offered protection after he testified on this version even though he was not aware of such protection. He further told the court that he had not been aware all these years that the then Commissioner of Police, General Joubert, had written a letter of commendation to him. He could not state why he was given a commendation. He conceded that it was a rare event and that such was reserved for police officers who have distinguished themselves in their career. He further conceded that he resigned from the police two days after the magistrate announced his findings on the inquest. He was angry with the police when he testified then because it was clear that his career would be finished, having refused the request from Buys, Gloy and Van Niekerk to add a lie to his statement.

190. Significantly, throughout his evidence, Rodrigues kept referring to the incident of the fall as "*ongeluk*" (accident).

191. Further during questioning, Rodrigues conceded that the last sentence in his sworn affidavit indicating that he did not assault Timol was not his idea but that of Buys. He consented to the inclusion of the sentence in his affidavit as suggested by Buys. The personal file of Rodrigues indicates that at the time he testified before the 1972 inquest, he already had a previous conviction of perjury, (making a contradictory false statement under oath.)

***Mr Ali Thoken***

192. Mr Ali Thoken is a businessman residing in Johannesburg. He testified as follows: On the morning of 27 October 1971, he was

filling his vehicle with petrol at the Dollars Filling Station opposite the south side of John Vorster Square. He was preparing to drive to Pretoria to sort out the issue of his business license. He heard a sound of a thud in the direction of the John Vorster Square Building. As he looked, he heard someone saying "*a man has fallen from the building*". He then moved across the street towards the direction of the sound and as he was approaching the middle of the street, he was told to go back by some plain-clothed member of the police who were by then standing around a body. He later learned that it was the body of Timol. Thokan informed the court that the incident he witnessed, occurred in the early morning of the 27 between 09H30 and 11H30. He emphasised that he was certain of the time because he would not have been there to prepare for a trip to Pretoria when it was in the afternoon. He knew that he would not find the government offices open in Pretoria in the afternoon. He was certain that it was in the morning. He was never called to testify in the 1972 inquest.

***Mr Ronnie Kasrils***

193. Ronnie Kasrils, a former Minister in the Government of the Republic of South Africa, testified as to the training that was received by the underground members of the SACP operating in South Africa. He testified as follows: He was in exile in London and was part of a group that trained new recruits into the SACP. He did not meet Timol personally, but he had heard of him and was of the view that he was trained by Hogson and Dr Yusuf Dadoo.

194. The new recruits who had to work underground were as part of their training, prepared how to deal with situations in case of arrests. They were instructed that during interrogation, they have to delay giving out

information particularly about other SACP members operating in South Africa. A detainee had to resist as much as possible, within twenty four or forty eight hours of their arrest, so as to allow other underground members linked to that cell to go into hiding. The trainers prepared the new recruits to hold out as much as possible even though as trainers, they conceded that sometimes it may be difficult to do so. The recruits were further trained to give out the obvious information that the police would have access to as part of delaying the process. He denied emphatically that members were taught to commit suicide when arrested. On the contrary, the SACP recruits who find themselves in detention were taught to accept the opportunity to stand trial when charged. This with the hope that he/she would be sent to prison, from where she/he could continue contributing to the struggle. It would therefore not be true that Timol was afraid of going to prison for twenty years as found by the magistrate. The new recruits were trained not to fear jail sentences.

***Mr Abdullah Mohammed Adam***

195. Mr Abdullah Mohammed Adam is a bookkeeper who was employed at Dollar's Filling Station opposite John Vorster Square in 1971. He testified as follows: On 27 October 1971, he was about to go on a tea break at 10H00 in the morning when his boss called him to go and check the commotion that was taking place across the street on the side of the John Vorster Square Building. He crossed the street and reached the pavement on the side of John Vorster Square. He saw a body of a person having lying on the shrubs with one of the shoes off his feet. He could not see clearer as his view was obscured by the shrubs. While he was there, the members of the police in plain clothes ordered him and the other passers-by to leave. He went back

across the street. When he got back into the filling station he told his boss what he had seen and went on to have his fresh tea.

196. Mr Adam was emphatic in his evidence that the incident he witnessed occurred in the mid morning between 10H00 and 10H15 because that is the time when he always had his tea. He denied that it was in the afternoon. He was able to remember the incident as he linked it with his tea break which has always been between 10H00 and 10H15 in the morning. He later learned from the newspaper reports and people speaking in the community that the person whose body he saw was Timol. He was never called to testify in the 1972 inquest.

***Mr Imitiaz Cajee***

197. Mr Imitiaz Cajee ("*Cajee*") is Timol's nephew. Timol and his mother are brother and sister. He testified that he grew up in Mpumalanga and never knew Timol that much. He was told about Timol by his grandmother, Timol's mother, Hawa. It was Cajee who encouraged Timol's reluctant mother to testify at the Truth and Reconciliation Commission ("*TRC*"). It was during that event that he vowed to devote much of his time to find out what actually happened to his uncle, Timol. He then communicated, with the assistance of non-government organisations, with the National Director of Public Prosecutions ("*NPA*") who initially responded to his correspondence that the matter was closed as the investigators could not find anything.

198. Cajee persisted in his efforts until, with the assistance of other legal representatives, was able to persuade the Minister, through the NPA, to re-open the inquest.

199. Prior to the inquest being re-opened, he communicated through correspondence with the then retired Lieutenant Colonel Gloy in an attempt to find out what transpired to his uncle, Timol. At first Gloy responded to his enquiries by referring him to the 1972 inquest outcome. Later, however, Gloy refused to correspond further with him and even threatened to institute legal proceedings if he persisted in communicating with him.

200. Cajee committed himself to pursuing his investigation in order to know what could have happened to his uncle. In the process, he authored a book titled "***Timol – A Quest For Justice***". He was supported by the family and in particular his uncle Mohamed, TCR Commissioner Yasmin Sooka and later Adv. Howard Varney and Frank Dutton as well as Adv. George Bizos SC.

201. Cajee ended up his evidence by requesting the Court to make the following recommendations to the authorities, namely:

*“35.1 The erection of a sculpture outside Johannesburg Central Police Headquarters which pays tribute to all political detainees who died in police detention during the apartheid-era, alternatively, or in addition, a memorial to uncle Ahmed could be erected at the impact side in the garden outside the south wing.*

*35.2 The conversion of the south wing of the 10<sup>th</sup> floor of Johannesburg Central Police Headquarters into a memorial enshrine for political detainees who were tortured or killed during apartheid. This could be in a form of a museum or educational centre, open to the public, which tracks the history of security detention and its abuses. In particular Room 1026*

*and the other interrogation rooms should be faithfully restored to how they were in 1971.*

*35.3 The energetic and vigorous investigation of outstanding apartheid-era cases before it is too late, which may involve the creation of a dedicated team of carefully selected investigators and prosecutors. All State entities should be required to supply all information at their disposal to this team.*

*35.4 All files pertaining to political detainees of the apartheid-era must be made easily accessible to the families seeking answers.”*

202. The Court informed Cajee that in terms of the inquest Act, the powers of the Court are limited to determining amongst others things, the cause of death. It will certainly be outside the scope of the inquest to deal with the recommendations he had made except to mention them in this judgment as I do.

### **Seth Sons**

203. Mr Seth Sons is a former member of the Security Branch attached to John Vorster Square. His office was on the 9<sup>th</sup> floor and he came to testify under subpoena, in the same way as Messrs Els and Rodrigues. He testified as follows: He was attached to the Security Branch of the South African Police at John Vorster Square. He was a leader of a unit of black members of the Security Branch. On a date he cannot recall in October 1971, he was requested by a superior officer, Captain Dirker to accompany him on an errand. He, together with Dirker and other Security Branch members drove out to Timol's home. On arrival there, he remained in the car and noticed some women who were standing on the veranda. He noticed some chicken

hanging on the veranda and blood flowing there. Dirker and others went into the house and later came back with, amongst others, a typewriter.

204. On their return to John Vorster Square, Sons went to park on the west side of the building and used the west entrance to access the building. On his way to the elevator, he heard people say that a person fell from the top floors of the building to the ground. He went back to his office on the 9<sup>th</sup> floor. On being questioned by the Court as to why he did not enquire from those people as to who fell, he repeatedly stated that he had a phobia of seeing people who have sustained injuries from a fall as that would turn his stomach. He did not want to make such enquiries. The Court reminded him that he had described himself as a leader of a unit operating from the 9<sup>th</sup> floor. Therefore the person who fell could have been a member of his unit. Under the circumstances one would expect that a natural reaction of any person in his position, out of curiosity, would be to inquire as to who fell from the upper floor of the building.

205. Faced with this obvious and simple logic, Sons became agitated and stated repeatedly that it is not his nature to enquire into other people's business as he thought it was some other people's business. The Court then put it to him that the only reason why he reacted the way he did, is because he already knew at that time, that the person spoken about was Timol. He denied that. He came to know of the identity of the person when he was back in his office on the 9<sup>th</sup> floor.

206. As with other two members of the Security Branch who testified, Sons stated that he does not know of any assaults on detainees and that he has read about these in the newspapers. He denied when it was put to him the names of people who will testify that he in fact assaulted them when he detained them. When confronted with this

evidence, he suddenly suffered loss of memory and stated that he could not remember some of these incidents.

207. After Sons testified, the Court received five affidavits from former detainees who allege that they were either assaulted by Sons or assaulted by members of his team in his presence.

### **Evidence of various other witnesses**

208. Over and above the evidence of witnesses who testified orally before Court, there were a number of affidavits deposed to by witnesses, some of whose evidence is based on events after Timol's death and thus does not directly relate to the incident concerning Timol. However, their evidence contradicts denials of assault by former members of the security branch and further goes to show the pattern of behaviour and conduct by members of the Security Branch towards detainees.

### **Mr Laloo Chiba**

209. Mr Chiba testified in his affidavit that he was arrested on 17 April 1963. During his detention he was subjected to torture in various forms including severe assaults, being thrown around, punched and slapped; a hessian bag placed over his head and over two third of his body and subjected to electrocution. He was interrogated by amongst others Captain "*Rooi Rus*" Swanepoel, Lieutenants Van Wyk, Brits, Van der Merwe and Victor.

**Mr Abdulhay Jassat**

210. Mr Jassat was also arrested in April 1963. He testified that he was subjected to various forms of torture which included having a wet hessian bag placed over his head and tied over his knee; being picked up under his armpits and by his feet and thrown down onto the cement floor; subjected to electrocution; made to stand on the same spot whilst being interrogated continuously; being hit on his hands with a ruler; forced to place his thumb on a coin and made to chase it around a table and being dangled outside a window whilst each officer held his ankles.

**Miss Shantavothie Tweedie**

211. Ms Tweedie is a former detainee who deposes as following in her affidavit. She was in detention from 13 June 1969 and subjected to various forms of torture, including sleep deprivation; solitary confinement; made to stand for long hours and denied a bath and the possibility of being drugged. Her interrogators included a "reddish round faced man", known as "*Rooi Rus*" Swanepoel.

**Dr Snuki Zikalala**

212. In his affidavit Dr Zikalala states that he was arrested on 12 May 1969 and subjected to various forms of torture such as being made to stand with his hands on his head on three unbalanced bricks; prolonged and continuous interrogation sessions; starvation and in those instances where food was provided, he was made to kill cockroaches with his bare hands before being allowed to eat with those hands. He was further subjected to physical assaults. Also in his case, his interrogators included Swanepoel.

**Mr Peter Magubane**

213. Peter Seford Magubane (*"Magubane"*) is a professional photographer who stated in his affidavit that in June 1969 he was arrested and held in solitary confinement for a period of 586 days. Since then he was arrested and detained several times. He is an accomplished photographer with a number of prestigious awards to his name.

214. When he was arrested in June 1969, he was photographing the protest taking place outside of the Pretoria Central Prison where Mrs Winnie Mandela and 21 other people were held. He was suspected of having an affiliation with the ANC. He was held in John Vorster Square for two days and thereafter transferred to Compol Building in Pretoria. That is when he was tortured by Lieutenant Swanepoel (*Rooi Rus*). Swanepoel made him stand on bricks for three days and three nights, interrogated for long hours and kept awake by being fed large quantities of black coffee. His body became dehydrated until he urinated blood. On his release, Magubane was placed under a banning order with restrictive conditions that in effect he was under house arrest and not allowed to be a photo journalist. As a result of the torture he endured, he experienced issues of body balance and memory loss.

215. Magubane suffered a fractured nose in a subsequent encounter with a police officer seeking to destroy his camera film.

### **Gadija Chothia**

216. Gadija Chothia (*"Chothia"*) was also among the people who were detained on the Saturday 23 October 1971. During her interrogation she was not physically assaulted. She was assisting Timol with typing the addresses on the envelopes that would be used to distribute political literature by post.

217. Chothia states in her affidavit that she last saw Timol on 22 October 1971, the day of his arrest. Timol had visited her at her work place. He was either on his way to or from Friday Afternoon Jumuah prayers. She recounts that as far as she could see, Timol was injury free. *"He moved easily and freely and did not show that he was in pain of any sort, nor did he mention that he had been involved in an altercation or suffered any injuries of any sort."*

### **Dr Farouk Dindar**

218. Dr Farouk Dindar (*"Dindar"*) is a neurologist, practising as such at the Scarborough Hospital, Birchmount Campus, Toronto, Canada. He is a first cousin to Timol.

219. Dindar recounts how he met several high profile ANC leaders such as Messrs Ahmed Kathrada and Nelson Mandela at the time the latter was operating underground. After graduation, he moved to work in Zambia where he continued to meet with other ANC leaders such as Messrs Oliver Tambo and Alfred Nzo. Dindar later moved to England where he met Timol, who at that time was residing with the Pahad brothers, Essop and Aziz. From London he moved to further his studies in Canada. He thereafter returned to South Africa.

220. Back in South Africa, Dindar reconnected with Timol who had also returned. Dindar's in-laws lived close to Timol's flat. He states that on the evening of 21 October 1971 after super at his in-laws, he visited Timol in his flat. He chatted with Timol, who was cheerful. *"Physically he was in his normal state of health and showed no signs of pain. He had no marks or injuries that I could see."*

221. Dindar heard of Timol's arrest and later of his death. When Timol's body was returned to his flat for burial, Dindar went to the flat to see the body. He narrates this experience in his affidavit as follows:

*"24. I went to Ahmed's (Timol) family flat and walked amongst the women who were seated on the floor and asked to see the body of Ahmed. A family member removed the cloth that covered him, and my eyes fell upon the wounds on his body. I was appalled at the number of wounds and marks on him, which I suspected could not all be attributed to the fall."*

222. Dindar attended the inquest in 1972, which he describes as a farce. He attended to *"know what the police pathologist would say about the microscopic examination of the wounds on his body."*

He continues:

*"To my knowledge when a wound heals, initially there are polymorph nuclear white cells which are actively involved in the healing process. Once that is completed, macrophages are seen in the wound to do the final "cleaning up". In a fresh wound you would not see macrophages.*

*If you see macrophages the wound has to be a few days old. Microscopic examination of Ahmed's wounds showed a few macrophages. The question the police pathologist was asked "how many days does it take for macrophages to appear first after the injury." He selectively quoted one paper from an Australian pathologist in which the macrophages were first seen on day 10. He ignored all other studies where macrophages have been seen in wounds much earlier. On the*

*basis of a few macrophages seen in Ahmed's wounds he concluded that they were 10 days old."*

### **Ms Monica Dube**

223. Ms Monica Dube ("*Dube*") is a Social Worker by profession, in private practice. She states in her affidavit that in 1982 she joined Centre for Social Development at Wits. That is where she met two friends, Terry Sacco and Maxine Hart. During or about June 1984, she and her two friends went to Botswana on a visit. She stated that for her it was a holiday.

224. In the early hours of 11 September 1984, four members of the Security Branch came to her home in Pimville, Soweto and arrested her. Dube was told that she was being held in terms of section 29 of the Internal Security Act 1982 (*the successor to section 6 of the Terrorism Act*). She was first taken to Protea Police Station, then to her mother's home in Meadowlands, Soweto, where they searched the house, threatening her mother that she will not see her again if she insisted on production of a search warrant.

225. From her mother's house, Dube was taken to John Vorster Square where she was interrogated about the trip to Botswana with her friends. Dube recalls an incident during her interrogation, when a man was brought to in. She narrates:

*"...I was introduced to an (sic) as member referred to as MS. They called him shouting "MS, MS", he was a very big strong man. He gave me a terrible look. He had what I could describe as a no nonsense face. He said "What is wrong with you, can't you co-operate with the police?" I said there is nothing to cooperate about. He lifted me up, almost totally off of my feet, with only one hand under my armpit and said "do you think*

*Timol jumped or was he pushed? I was dead frightened. I said I think he jumped. He said “no we pushed him. And that is what is going to happen with you. I am going to push you.”*

*27. Then he put me down, his sneering look and the way he grabbed me was very dehumanising. He left the room saying “now, I will sort out the other hardegatte”<sup>28</sup>. I assumed he was referring to Maxine and Terry”*

226. Dube states in her affidavit that she was made to sign a statement which she was not allowed to read. She was not physically assaulted, but deprived of sleep in the cells by a female police officer who kept her awake at night through repeated meaningless conversation. She was later released from detention. She heard later that the statement she was made to sign, whose contents she did not know, was used at the trial of Maxine. She was however not called to testify.

227. The evidence that follows is from the affidavits of former detainees who came forward after Sons testified, to dispute the allegations by Sons that he read about assault of detainees in the media. The deponents of the affidavits did not testify orally in Court and their evidence was not presented to Sons to comment thereon.

### **Mr Ismail Momoniat**

228. Ismail Momoniat (“*Momoniat*”) is a Deputy Director General in the National Treasury in the Government of the Republic of South Africa. He is a former activist who also testified in the inquest into the death of Dr Neil Aggett. He was in detention with Dr Neil Aggett at the time the latter met his death.

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<sup>28</sup> An Afrikaans derogatory word for persons accused of being stubborn or arrogant.

229. Momoniat writes in his affidavit that on his first day of detention in April 1980, at John Vorster Square, he was taken to the cells by Captain Sons. Sons kept threatening him that he will make him eat pig meat.
230. Momoniat believes that Sons would have definitely been aware of the beatings or torture at John Vorster Square. *“This is because one could easily hear people when they were being assaulted or tortured, and sometimes one could even see assaults taking place through stained glass partitions. It is simply not true that a long-serving and dedicated security policeman like Captain Sons would not have heard or seen any assaults on detainees, particularly since he operated or had access to the same security branch floor at John Vorster Square.”*

### **Mr Parmananthan Naidoo**

231. Mr Parmananthan Naidoo (“Naidoo”) grew up in a family of political activists and later he also became an activist. After the death of Timol he became one of the founders of Ahmed Timol Memorial Committee. He retired as ANC chief whip in the council of the City of Johannesburg in August 2012.
232. Naidoo narrates of his experience when he was arrested by Sons and other members of the Security Branch at his house in the presence of his family. They insulted and threatened him all the way to John Vorster Square. He was taken to the 10<sup>th</sup> floor where Majors Cronwright and Arbee began to assault him. This they did in the presence of Sons. He was held by the hair and had his head banged on the desk.

### **Mr Kevin Martin**

233. Mr Kevin Martin ("Martin") is a semi-retired Civil Engineer Designer and former student activist. He states in his affidavit that he was arrested during or about July 1975 on his way to school. He was taken to the 9<sup>th</sup> floor of the John Vorster Square building. He was subjected to torture by Lieutenants Sons, Visser and sergeant Magoro. He was struck by Visser with his fists and when he fell down, both Visser and Sons repeatedly lifted him up by his arms and leg and dropped him on his back and head until he almost passed out. Sons then held him down as Visser sat on his chest and repeatedly kicked him with the heel of his shoe. Thereafter Sons pulled his pants down and squeezed his private parts.

234. Martin state further that he was tortured for an hour and then taken to a cell to heal without medication. It took a week for the swelling on his head to subside. He was released early in September 1975 without being charged.

### **Mr Alwyn Donovan Graham Musson**

235. Mr Alwyn Donovan Graham Musson ("*Musson*") is an Information Technology consultant. He grew up at Bosmont Township and attended school at Chris Jan Botha High School where he started his student activism against racial divisions in sport. He became part of an organisation called Action Youth, which was formed while he was a student at Wits. In June 1983 Musson was arrested together with his father by Sons who took him to the 10<sup>th</sup> floor of John Vorster Square building after he was separated from his father on arrival. Sons gave him a pen and paper to provide him with the names of other activists who were part of Action Youth and left the office. Soon thereafter a white member of the Security Branch came in and

threatened to throw him out of the window if he did not provide the names. *“Sons returned to the office after about half an hour and became angry when he noticed that I had not written down anything, He then slapped me on the sides of my head with an open hand.”* I was later released and my father was released too.

### **Mr Hanif Mohamed Vally**

236. Hanif Mohamed Vally (*“Vally”*) is the Deputy Director of the Foundation for Human Rights in Johannesburg. In 1977 Vally was detained in terms of the Internal Security Act (preventative detention) and held at Modderbee Prison in Benoni for 8 months. He participated in the 1980 student protests as an activist. He was arrested and taken to John Vorster Square by Security Branch police officers who worked with Sons. He was later accompanied by more police officers, including Sons to search at his flat and car. He was taken back to John Vorster Square where he was interrogated a number of times and Sons was part of the team. Vally recounts how he was stripped naked in the first session of the interrogation and Sons took off his spectacles and other policemen stated slapping and kicking him. Mr Paul Erasmus was present when he was assaulted.

237. Apart from a bundle of documentary evidence consisting of copies of newspaper cuttings, personal files of the police, building designs, publications and pictures of the autopsy and members of the Security Branch who interrogated Timol, this completes the evidence before Court.

## EVALUATION

238. *In re Goniwe and Others*<sup>29</sup> (Inquest), the Court approached the test applicable in inquests as follows:

*“The presiding officer at the inquest need go no further than to ask himself whether a prima facie case has been established against any particular person...”*

And

*“Bearing in mind the object of an inquest it is my opinion that the test to be applied is not “beyond reasonable doubt” test but something less stringent. In my opinion the test envisaged by the Inquest(s) Act is whether the judicial officer holding the inquest is of the opinion that there is evidence available which may at a subsequent criminal trial be held to be credible and acceptable and which, if accepted, could prove that the death of the deceased was brought about by an act or omission which involves or amounts to the commission of a criminal offence on the part of some person or persons.”*

239. Murphy J in *FULL v NDPP supra* writes:

*“[77]....The only question for the magistrate, in terms of section 16(2) of the Inquest(s) Act, was whether the death was brought about by conduct prima facie amounting to an offence on the part of any person. A prima facie case will exist if the allegations, as supported by statements and real documentary evidence available, are of such a nature that if proved in a court of law by the prosecution on the basis of admissible evidence, the court should convict.”*

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<sup>29</sup> 1994 (3) SA 877 (SE) at 879.

240. In arriving at a finding, this Court has to consider the entire evidence available on record and form a *prima facie* view.

241. The nub of this case is what really caused Timol to fall to his death. This is really the question. It is not about the cause of death, which in essence has been medically diagnosed as arising out of severe head and chest injuries consequent to the fall. This is the context within which the conspectus of the evidence should be understood.

242. In an attempt to respond to the question that lies at the heart of this case, the Security Branch fabricated a version that alleges that Timol, on his own, jumped out of the window of room 1026 at John Vorster Square to commit suicide. In order to support this narrative, the Security Branch proffered 3 reasons. Firstly that Timol during interrogation repeatedly expressed fear of being imprisoned for 20 to 25 years. Secondly, that he was scared that the 3 persons announced by Mr X to have been arrested, the Jacobsen brothers, will implicate him in criminal activity. Thirdly, that as a communist, he chose to commit suicide rather than betray his comrades. The magistrate was mindful of the inadequacy of these reasons and added the fourth that sought to explain the *ante mortem* injuries. His unsubstantiated reason was that Timol sustained the injuries in a brawl where he was pushed around.

243. The bulk of the evidence presented in the 2017 re-opened inquest mainly challenges the 4 reasons on which this version of suicide rests. The evidence of the former detainees, the medical doctors and the trajectory presents a version not considered in the 1972 inquest, in order to prove that Timol, like other detainees, was tortured to the extent that he could not have physically been in a condition to run towards the window, get out and propel himself to land on the spot identified by the Security Branch, within the time alleged by

Rodrigues. This evidence not only challenges the probability of the Security Branch version, but provides a counter to the magistrate's reason for the *ante mortem* injuries.

244. The evidence by members of the SACP is intended to demonstrate that Timol would not have committed suicide as suggested in the forged publication and that he was trained to embrace a possible conviction and long term prison sentence as a '*badge of honour*'. This evidence responds to the reasons advanced by the Security Branch that Timol was afraid to be imprisoned for 20 or more years and further that his suicide was inspired by directives in the Communist Party publication.
245. The evidence by former members of the police, Dutton and Erasmus as well as the 3 civilians who witnessed Timol's body during and immediately after the fall in the mid-morning, not only challenges the probabilities of the version that Timol jumped at about 15h50, but also supports the contention that Rodrigues's version, which is predicated on events occurring late in the afternoon, was fabricated and stage-managed as part of a cover up to conceal the facts around the death of Timol.
246. In regard to the reason advanced that Timol was afraid to be implicated by Quinton, Henry and Martin, no evidence was presented from either Mr X or the 3 people mentioned. In fact, Quinton was charged and tried. At his trial, no mention was made of Timol either by the State witnesses or any other person. Quinton was acquitted of the charges. The State had ample opportunity during that trial, even without Timol present to defend himself, to present evidence of a link between Quinton and him. That never happened. The Timol family, with reference to the evidence of Essop as to how he introduced Timol to the 3 brothers as well as the absence of any reference to

Timol in Quinton's trial, sought to demonstrate that the Jacobsen's story was fabricated to support the allegation of suicide.

247. Then there is the evidence of Nel on the mysterious disappearance of portions of the record containing the entire oral evidence of the police, during the 1972 inquest proceedings. Significantly, only page 3 of Rodrigues's affidavit dealing with the version as to how Timol is supposed to have jumped is missing. The impression one gets is that there was a deliberate attempt to destroy the evidence in order to frustrate any attempt to re-assess the evidence in case the inquest is re-opened.

248. The evidence presented in the 2017 re-opened inquest is thus in direct response and challenge to the conclusions and findings of the magistrate in the 1972 inquest. The task of this Court is therefore to evaluate all the evidence of the two inquests proceedings in light of the surviving record of the 1972 inquest and the further evidence received in the 2017 re-opened inquest. The evaluation of the evidence can thus no longer centre solely on the version of the Security Branch.

249. In his judgment of the 1972 inquest, the magistrate appears to have been constrained to reach a conclusion that would exonerate members of the Security Branch from culpability concerning Timol's death. He went out of his way, with no evidence in support, to proffer a view that the injuries on Timol's body which were inconsistent with the fall, were as a result of a "*brawl where he was possibly pushed around.*" The magistrate also concluded that Timol committed suicide as a result of a number of reasons. These reasons include fear of being identified by Quentin, Martin and Henry; fear of being imposed twenty years imprisonment and what turned out to be a forged document of the Communist Party purporting to direct its members to

opt to commit suicide rather than betray other comrades. These conclusions are the basis on which the finding of suicide by the magistrate is grounded.

250. The police's version, on its own, raised serious questions that called for answers. It seems to this Court that the magistrate also realised this fact, but somehow felt obliged to accept that version. He even went a step further to provide explanations where the version showed serious deficiencies. For example, in accepting the version that Timol was not assaulted, the magistrate went out of his way to express a view in the judgment, that Timol would not have been harmed since he was regarded as a "*big fish*" and to be of "*inestimable value*" to the Security Branch. Further, the magistrate went on to write in the judgment that it *was clear* that Timol "*and his followers were busy with a campaign of sabotage and even mass murder.*" There was no evidence that Timol was waging a campaign of sabotage and/or mass murder. Timol was distributing publications of the SACP, in opposition to the Apartheid order.

251. I turn to evaluate the evidence along the lines of the reasons advanced to support the conclusions and findings of the magistrate and then deal with the evidence of what caused Timol to fall.

### **The denials of assault on Timol**

252. The ill-treatment of detainees is often visualised or expressed in the form of physical assault, i.e beatings of detainees. It is indeed so the physical assault, apart from being a common method to hurt and bring fear into a detainee, it is also easier to prove by reference to scars from injuries or evidence of medical treatment. However, there are other less mentioned forms of torture which leave no evidence

and are difficult to prove, such as sleep deprivation, long hours of standing and interrogation as well as electrocution.

253. This Court is of the view that on the basis of the evidence received, it would be misleading to refer only to physical assaults as the ill-treatment of detainees. Detainees were subjected to beatings at various level of brutality, with the least being only slapped once across the face. It nevertheless remains an assault, but not comparable to those who were hit with solid objects, punched and kicked. It needs to be stated that there are instances of detainees that were not subjected to beatings, such as Monica Dube and Gadija Cothia. It will be more accurate to deal with the subject of ill-treatment or abuse of detainees under the rubric of torture, as it includes all forms of abuse visited on the detainees.

254. Some of the police in their sworn affidavits, clearly eager to exonerate themselves from culpability and in anticipation of facing possible allegations of assault on Timol, stated in their affidavits that they did not assault Timol or that Timol was not assaulted in their presence. These officers included Rodrigues, Van Wyk, Bean, Gloy and Van Niekerk. The police affidavits and the magistrate's judgment deals only with assault and does not deal with other forms of torture such as sleep deprivation, electrocution, causing the detainee to stand for hours and subjecting the detainee to long periods of continuous interrogation. The police officers were aware that unlike assault, which leaves evidence of physical injuries, the other forms of torture do not leave visible physical evidence and would be difficult to prove.

255. During the 1972 inquest, when the legal representatives of Timol raised the issue of torture and linked it with the *ante mortem* injuries,<sup>30</sup>

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<sup>30</sup> See the affidavit of Bizos.

it was met with denials throughout the proceedings and ultimate rejection by the magistrate. These denials and rejection were made, in spite of the visible injuries on the body of Timol, sustained before his fall.

256. The Magistrate accepted the version of the police that Timol was not assaulted. He went further and stated that Timol was treated in a “*civilised and humane manner*”. In his attempt to explain away the obvious injuries on Timol’s body, which were clearly sustained before the fall, the Magistrate expressed a view that was not supported by any grain of evidence. He stated that the *ante mortem* injuries on Timol could be explained as “*a brawl where Timol was possibly pushed around and possibly also fell*”.

257. The evidence presented by former detainees in the 2017 re-opened inquest indicates that they were subjected to various forms of torture. In particular the evidence of Essop, Jetham, Naik who were detained, interrogated on the 10<sup>th</sup> floor (Essop and Jetham) and 9<sup>th</sup> floor (Naik) in the same building and over the same weekend is relevant in determining whether Timol could have been tortured. The torture of Mohamed would not be of direct relevance as it occurred in Durban.

258. An attempt to call civilian witnesses would have been helpful to the magistrate. For example, it was clear even from the police version that Timol was arrested in the company of Essop. An obvious question that should have arisen is what happened to fellow detainee Essop. By raising this question, the magistrate would have found that Essop was detained, just like Timol, under Section 6 of the Terrorism Act for purposes of interrogation. The magistrate would have further found that both were interrogated from Friday evening of 22 October 1971 on the same 10<sup>th</sup> floor in different offices, at John

Vorster Square until 26 October (Essop) and 27 October (Timol); the magistrate would have again found that Essop was hospitalised from the 10<sup>th</sup> floor, on 26 October in a comatose condition; The magistrate would have also found that two Supreme Court<sup>31</sup> Justices accepted on evidence that Essop was brutally assaulted during interrogation to a appoint where he became comatose, the day before Timol's death.

259. In rejecting the police denial of assault on Essop, the Supreme Court went into detail in giving reasons why they rejected Greyling's denial of assault and concluded that Essop was brutally assaulted and that an interdict should be granted to prevent further assaults. At this stage Essop was still under Section 6 of the Terrorism Act. The justices had this to say:

*"The Colonel was unable or perhaps unwilling, to take the court into his confidence and give the true reason for this. Instead he dismissed the question with the answer 'I don't know'. In the light of what we have said, how can any court accept the Colonel's evidence on the aspects dealt with?"*

260. The judgment in that case had been available as at February 1972, two months prior to the commencement of the 1972 inquest. It was a judgment of two Judges which the magistrate should have been aware of. Greyling was the commander of all the team of Security Branch members who were interrogating Timol, Essop and others at John Vorster Square. Under the circumstances, it is difficult to understand how the magistrate would have failed to take note of this finding by a Superior Court. Significantly, Greyling, being the commander of the interrogating teams, neither filed an affidavit nor testified as a witness in the 1972 inquest.

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<sup>31</sup> The then Transvaal Provincial Division, the predecessor to the present Gauteng Division of the High Court, Pretoria, occupying the same building.

261. The evidence of assault and other forms of torture of detainees presented in the 2017 re-opened inquest is so overwhelming, that the denial and lack of knowledge thereof by the three former Security Branch police officers who testified is disingenuous. Further, the fact that each one of them testified during the 2017 re-opened inquest that they knew nothing about assault apart from what they read in the media, is a demonstration that they were regurgitating a standard response, seemingly prescribed to all members of the Security Branch. Else, Sons and Rodrigues's conduct calls for censure. Their conduct must be investigated further with a view to raise appropriate charges.

262. It is improbable that the Security Branch would subject the detainees arrested with or linked to Timol to various forms of torture, but treat him differently. There is sufficient evidence before this Court to hold that the Security Branch have tortured the detainees arrested within or a day after Timol. This torture continued over the same weekend and in the same building. It has been consistent and sustained. This evidence establishes similar facts in regard to the case of Timol.

263. On the basis of the overwhelming similar patterns of torture on the other detainees, this Court accepts that Timol was tortured, which torture included physical assault.

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### ***The ante mortem injuries on Timol***

264. It is logical to expect that in inquest proceedings, one of the primary sources of evidence to determine the cause of death would be the autopsy (sometimes referred to as post mortem or medico-legal) report. While it is accepted that the autopsy report may inform on the direct cause of death, the agent directly responsible for the cause of death may not be apparent. Nevertheless, the autopsy report would

ordinarily be the first point of call. Fortunately in this case, it was made available during the 2017 inquest proceedings, since it is one of the documents which survived the mysterious disappearance of some of the 1972 inquest records.

265. On 29 October 1971, two days after Timol's death, the then District Surgeon, Dr Schepers, conducted an autopsy on the body of Timol and compiled a report. In that report, Schepers recorded the cause of death as being consistent with "Multiple Injuries". Under cross-examination during the hearing, Schepers changed his opinion and stipulated the immediate cause of death as "*Serious brain damage and loss of blood*".
266. Gluckman generally agreed with the findings by Schepers, in particular that certain serious injuries were consistent with the fall from a great height and these were on the right side of the body. There were bruises found on the body whose age was a subject of debate during the 1972 inquest. There was a long debate on the possible age of the bruises and lesions. A determination of the age of these injuries was a critical factor in establishing whether they were sustained while Timol was in detention or not. Schepers and Gluckman opined that the bruises indicate that the injuries could have been sustained between four and six days prior to death.
267. Koch for the police determined the injuries (*ante mortem*) as having been sustained between nine and twelve days before death, meaning they were sustained prior to Timol's arrest. This issue became the main bone of contention during the 1972 inquest proceedings.
268. The evidence by the Medical experts in the 1972 inquest raises some questions. Schepers buckled under the pressure of cross-examination during his evidence and changed positions contrary to his

observations and report. While he conceded that injuries like a cracked jaw bone and ribs were often the result of assault, he went on to opine that they could have been sustained by Timol bumping into furniture. He then described these injuries as possibly twelve days or older. Having described the injuries as being serious, under cross-examination he changed position by saying that they were not serious and potentially could be caused by every day accidents and sporting activity. He, however, admitted that they could also have been caused by assault.

269. The magistrate concluded by taking the view that the injuries were sustained five to seven days before death and could therefore not have been sustained during interrogation.

270. The two expert pathologists, doctors Holland and Naidoo, in their separate opinions, concluded that some of the *ante mortem* injuries were so serious that Timol could not have been in a state where he could walk unaided, eat or drink without difficulty or sustain consciousness. Their opinions are based on a study of Scheepers's autopsy report. Naidoo in fact went further to study the portion of the 1972 inquest record that dealt with the evidence of the medical experts and the judgment by the magistrate.

271. Naidoo further opines that of the thirty five recorded injuries attached to the schedule prepared by Scheepers, approximately twenty five of these were sustained before the fall. Among these injuries was a serious injury on the calf, one on the toes, the other on the head and two others on both sides of the same hand. The argument of these doctors is that these injuries were sustained prior to the fall and could not have arisen as a result of the fall.

272. Counsel for the police submits that the Court should not place reliance on the opinion of these two doctors. The reason he advances is that their evidence cannot be better than that of doctors who performed the autopsy, namely Schepers and Gluckman. I do not agree. In the first instance the medico-legal report of Schepers and his conclusions were found wanting when the assessor, Simpson rose with Schepers that there were several other injuries that were visible on the photos but not included in the report. Secondly, under cross examination, Schepers found himself having to change his opinion as regards the cause of death. Consequently, the magistrate in formulating his conclusion relied on the views of Simpson, his assessor.

273. The evidence of Doctors Holland and Naidoo did not introduce new injuries, but shed light on the severity and what could have been the impact of the injuries on Timol before and after the fall. In their view, the evidence not caused by the fall contradicts the version of the police at least in two respects.

274. Firstly, the evidence of the Security Branch, including Colonel Van Wyk, Captain Bean, Sergeants Bouwer and Louw as well as arresting Officer Sergeant Kleyn, in a desperate attempt to extricate themselves from blame, testified that they did not notice any injuries on Timol. In particular, Bouwer and Louw testified that they were assigned to keep guard over Timol at night and they saw his torso free of injuries when he took his shirt off before he slept. If the statements of Bouwer and Louw are to be believed, then the magistrate's conclusion that Timol was injured in a "brawl" before his arrest, is incorrect. The pre-arrest injuries as ruled by the magistrate could have been visible to the two police officers. The magistrate accepted their evidence and failed to recognise the glaring inconsistency with the medical evidence.

275. Secondly, the opinions of Doctors Holland and Naidoo contradict that of Rodrigues. The injuries attributed to Timol prior to the fall, in particular on the toes and head, were such that he could not have moved with the alacrity and agility from the chair to the window without being assisted, as described by Rodrigues. Further, Rodrigues should have seen these injuries when, according to his evidence, he sat on a chair across the table opposite and facing Timol.

276. There is also the evidence of Essop that at the time he was arrested with Timol, the latter was fit and healthy. Essop is corroborated by Dr Farouk Dindar and Ms Gadija Chothia who submitted affidavits confirming that they saw Timol on 21<sup>st</sup> (*Dr Dindar*) and 22<sup>nd</sup> (*Ms Chothia*) of October 1971 and Timol was in good shape with no visible injuries.

277. The magistrate based his conclusion that Timol's *ante mortem* injuries were sustained prior to his arrest, on the discredited opinion of Koch. There is no other evidence supporting that conclusion.

278. In applying the principle of circumstantial evidence as set down in the seminal case of *R v Blom*,<sup>32</sup> this Court accepts that there are overwhelming facts proven from which the only inference that can be drawn is that Timol was tortured, which torture includes physical assaults. The proven facts include *ante mortem* injuries.

279. This Court therefore accepts that there is incontrovertible evidence that Timol sustained the *ante mortem* injuries in detention while being interrogated.

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<sup>32</sup> 1939 AD 188.

***The issue of Quentin, Martin and Henry.***

280. The Magistrate further concluded that one of the causes for Timol to commit what is purported to be suicide was his fear of being exposed by witnesses identified by Mr X. These witnesses are Quentin Jacobsen, Martin and Henry. The probative value of this evidence from the police was not properly assessed as Mr X was never called to testify nor was Quentin, Martin and Henry called to testify.

281. Essop testified that he and Timol only met Quentin once after being introduced to him by a friend and relative. They shared an interest in photography. The introductions were made at Quentin's photographic studio on Pritchard Street, Johannesburg. Quentin was not a political activist and had no political affiliation. There was thus no political link between Quentin and Timol. This fact was confirmed when Quentin was arrested and prosecuted after Timol's death. At his trial, there was no reference to Timol at all.

282. The magistrate simply accepted the evidence of the Security Branch without question or corroborating evidence and concluded that the purported link between Timol and Quentin, which did not exist, is one of the reasons for Timol to commit suicide.

283. This Court finds no evidence to support the conclusion of the magistrate on this point and accordingly rejects it.

***Fear of twenty years imprisonment and "Inkululeko Freedom" No 2, February 1972 document.***

284. Members of the Security Branch allege in their evidence that during interrogation, Timol repeatedly expressed concern that he will be sentenced to twenty to twenty-five years. He is said to have done so

when he indicated to his interrogators that he accepts all the blame to himself and others were not to blame. Further, Van Wyk concludes his affidavit by stating as follows:

*“Ek is van mening dat Timol selfmoord gepleeg het omdat hy beseef het dat die getuienis teen hom, verdoemend was en dat hy vir baie jare tronk toe sou moes gaan. Daarbenewens is dit ook bekend dat kommuniste eerder selmoord moet pleeg voordat hulle enige inligting aan die Polisie verstek”.*<sup>33</sup>

285. The magistrate accepted the evidence that Timol was concerned about a possible twenty year sentence. He also relied on a document that was not formally admitted in evidence to express a view that Timol committed suicide on the basis of a call purportedly made by the Communist Party and stated in that document. That document is *“Inkululeko Freedom”*, Volume 2 dated February 1972. The Magistrate did not indicate who presented that document to him and why it was not placed before Court and the presenter examined as to its origin. The document referred to is *“Inkululeko Freedom”* No 2 of February 1972, which was issued by the SACP.

286. The evidence of Stephanie Kemp, Pahad and Kasrils above, demonstrate in detail how the SACP document on which the magistrate relied was a forged copy of the real one. It was forged by addition of a few paragraphs at the end, which proved not to conform to the language style and the policy of SACP not to mention names of individuals in publications. The forged document is purported to be issued by the *“Communist Party of South Africa”*, an organisation that no longer exists.

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<sup>33</sup> Free translation: *“I am of the view that Timol committed suicide because he realised that the evidence against him was damning and that he would have had to go to prison for many years. In addition thereto, it is also well-known that communists would first have to commit suicide before they could provide any information to the Police.”*

287. The publications were in fact issued by SACP, which was a banned organisation in South Africa at that time and its leadership operated underground in exile out of South Africa. Its activities were carried out by underground units or cells of recruits in South Africa. Apart from the obvious spelling mistakes and naming of individuals, the reference to an organisation that ceased to exist in a publication that is dated four months after Timol's death was a giveaway. The magistrate failed to scrutinise the forged document.
288. Erasmus testified that the Security Branch routinely forged documents as part of a counter- revolutionary propaganda. He was attached to that unit in John Vorster Square when he joined the police in 1977.
289. Essop, Mohammed and Pahad testified that it would not have been in the nature of Timol to commit suicide. Pahad in particular testified that Timol had a girlfriend in London and looked forward to re-joining her. In addition, it was against Timol's religion to commit suicide. These were facts which members of the Security Branch were clearly not aware of when they conjured up the suicide narrative as a cover up.
290. Kasrils in his evidence also stated how each recruit into the SACP was made aware, during training, of the possibility of arrest, torture in detention, trial and possible lengthy prison sentences. The recruits were trained as to how to respond to these situations should they arise and in particular to embrace a trial and prison sentence as providing an opportunity to live to continue the struggle. A lengthy imprisonment should be regarded as a "*badge of honour*."

***Evidence of the trajectory.***

291. The evidence of Moodley, the Aeronautic Engineer, further contradicts Rodrigues' version that Timol jumped to his death. His

conclusions, which have been dealt with above, indicate that in terms of the trajectory, where the body landed in relation to the building, additional force was applied to accelerate his fall. He fell further from the trajectory which, if he had jumped, would have been nearer to the building itself. The scenarios 3 and 4 indicate that Timol was pushed. Rodrigues could not comment on it.

***Evidence on the time of the fall.***

292. The evidence of the time of the fall received by the 2017 re-opened inquest left the Court with two mutually exclusive versions. Civilian eye witness evidence by Matthis, Thoken and Adam state that the fall occurred mid-morning on 27 October 1971 between 09H00 and 11H00. In fact, one witness places the incident as having occurred between 10H00 and 10H30, at the time when he was on his tea break.<sup>34</sup>

293. Members of the Security Branch, led by Rodrigues placed the time of the fall as being at 15H45 and 16H00 on the same date. It is clear that both versions cannot be true and that only one of them would be true. Kemp, who declared Timol dead at 16H00, alleges in his affidavit that he was called at about 15H55 and arrived at the scene at 16H00 whereupon he declared Timol dead. In his one paragraph statement, he mentioned that the body had recently died (*"hy was pas dood"*). Naidoo opines that Kemp's reference to *"pas dood"*, in all probability expressed his view in relation to the stage of decomposition of the body. A body begins the process of decomposition normally several hours after death. He then opines that it could be that Timol died early in the morning or even in the afternoon, he is unable to tell on a basis of the evidence. Kemp did

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<sup>34</sup> See the evidence of Abdulla Mohammed Adam.

not give details in regard to the condition of the body as at the time when he declared it dead. It is thus left to a determination of probabilities based on the two versions, that of the police as against that of the civilians.

294. The relevance of the evidence on the time of the fall has a bearing on the credibility and reliability of the versions. More pertinently, it is critical in determining which version is fabricated.

### ***The version of the Security Branch***

295. The version of the police is that Timol, on his own initiative, jumped out of the window on the 10<sup>th</sup> floor of John Vorster Square and fell to his death. The magistrate concluded that Timol committed suicide. During the 1972 inquest, this version of the police was challenged by legal representatives of the Timol family. It emerged that there were contradictions and inconsistencies in the statements of the police in regard to what precisely happened. The primary witness and conveyer of this version in this regard was Rodrigues. His evidence has been dealt with in detail in this judgment. For purposes of evaluation, it is necessary to assess its credibility.

296. The contradictions start with Rodrigues himself. He testified in the 1972 inquest that when he entered room 1026, the police were interrogating Timol. Then he changed to state that Timol was not doing anything. This aspect of the evidence was further contradicted by Gloy and Van Niekerk who testified that when Rodrigues entered room 1026, Timol was writing a statement. In further contradiction, Rodrigues stated in his affidavit that after Timol fell, he rushed to Greyling's office. He is corroborated by Gloy who testified that immediately after the incident, he found Rodrigues in Greyling's

office. In the 2017 re-opened inquest he testified that he saw and met Greyling for the first time when Greyling, together with other officers on the 10<sup>th</sup> floor, came to room 1026 after Timol fell. He did not rush to Greyling's office, but to the corridor shouting alarm.

297. Rodrigues further gave different accounts as to what happened in room 1026. He was questioned at length about the scenario he painted in room 1026 concerning his version of events. The inconsistencies and improbabilities of that version were exposed, in particular, considering that at that time, he, Rodrigues was much younger, an athlete, a rugby player, tall and bigger than Timol. His version that he could not restrain him from jumping out of the window was improbable. In particular, it was put to Rodrigues that Timol could not have moved out the window as he described, as the window opened in the middle, leaving a narrow gap to go through without injuring oneself or tearing one's clothing. Further, that his version is not supported by the medical evidence which showed that Timol at the time, had been so tortured and assaulted that he could not, unaided, stand up from the chair and dash to the window and jump out in a matter of seconds as Rodrigues testified.

298. Rodrigues was also contradicted by Pattle, when the latter testified in 1972. Pattle testified that when he entered room 1026, there was no sign of struggle or chairs that had fallen. Rodrigues did not mention anything to him about stumbling over a chair. Rodrigues could further not explain the statement by Buys to the media, made two days after the death of Timol, that before Timol committed suicide, he suddenly jumped and rushed to the door, then turned and rushed to jump out of the window. Rodrigues denied having mentioned anything about rushing to the door. The version of rushing to the door was also repeated by Gloy, who like Buys, alleged that they were told this version by Rodrigues.

299. In 2017 Rodrigues introduced a new version concerning a suggestion made to him to include in his statement that he wrestled with Timol before the latter jumped. The impression gained by the Court from this statement was that Rodrigues wanted to paint a picture of a person who is independent and not easily influenced. He clearly fabricated this version so as to bolster the credibility of his evidence. He could not satisfactorily explain why he had not disclosed this aspect of his evidence in the affidavit, to the 1972 inquest or at any time thereafter. It seems to the court that this version was intended to bolster the credibility of its own story and to present him as a person who was stating the truth and being intolerant of any influence. This version is contradicted by his own statement that Buys asked him to add in his statement that Timol was not assaulted to which he agreed. The Court is of the view that there was no need for him to agree to any statement on assault as he was an officer from Compol Building in Pretoria who was employed as a salary clerk and therefore would not have known, on his own version, what goes on in the interrogation. He had repeatedly told the Court that he was not allowed to go into the area of interrogation as what goes on there was "*uiters geheim*" (utmost secrecy).

300. Rodrigues further revealed to the court that his statement which was made in November 1971 was written down by Buys in his presence. During questioning by the Court as to why he had made reference to assault on Timol in his affidavit, Rodrigues answered that Buys suggested that a sentence should be added in the affidavit, which would state that he did not assault Timol. He agreed to that suggestion. The affidavit which was written by Buys in the presence of Rodrigues, had a statement suggested by Buys which Rodrigues accepted and deposed to before the same Buys, attesting as

Commissioner of Oaths. This Court is unable to offhand recall any better example of evidence tempering and subversion of the truth on the part of both Buys and Rodrigues!

301. The magistrate ignored these material contradictions and inconsistencies on the version of Rodrigues and surprisingly accepted all police witnesses as being honest and truthful witnesses. The finding by the magistrate that Timol committed suicide rests primarily on Rodrigues' version. The Magistrate ignored the most obvious and material contradiction of Rodrigues' version by Brigadier Pattle. Pattle had a different version provided to him by Rodrigues as to what happened in Room 1026. The Magistrate in his judgment acknowledged the fact that Buys was aware of the two contradictory versions even as he took the stand. Ordinarily, such contradiction would have cast serious doubts on the credibility of Rodrigues' version. As Bizos stated, there was very little enthusiasm on the part of the magistrate to question this version of the police.

302. What also appears strange in the 1972 records is that of the 20 plus police officers who deposed to affidavits and testified in the 1972 Inquest, only 5 make mention of Rodrigues. These are Gloy, Van Niekerk, Pattle, Schoon and Buys. Schoon did not testify in 1972. Rodrigues testified that he went to the ground floor with Greyling in the elevator. Deysel says he went to the ground floor with Greyling in the elevator. Neither of the two makes reference to each other's presence. Further, Rodrigues is neither supported by any uniformed police officers who were on duty that day at the reception on the ground floor, nor by members of the Security Branch who were working on the 9<sup>th</sup> and 10<sup>th</sup> floor who, according to Rodrigues, came out of their offices when they heard him shout and went into 1026 to look for themselves. Neither of these witnesses nor their affidavits

were obtained and placed before the 1972 inquest proceedings or the 2017 re-opened inquest proceedings.

303. The mystery around the presence and role of Rodrigues at John Vorster Square at the time Timol fell, supports the contention that his version has been conjured up to conceal the truth.

304. It is not difficult to understand why the Rodrigues version lies at the heart of the 1972 inquest. It was the only version placed before the inquest by members of the Security Branch, Rodrigues being their main witness. The Security Branch took advantage of the fact that because of section 6 of the Terrorism Act, they, apart from the detainee, were the only persons privy to what transpired in the morning of the fateful day. The only other person who could have provided an alternative version in this case was Timol. Timol was not there to speak for himself.

305. It needs to be recorded that at the time Rodrigues gave evidence before the 1972 inquest, he already had a previous conviction of perjury.

***Evidence of cover up.***

306. There is evidence supporting the view that the statements by members of the Security Branch, the police officers investigating the death of Timol and the proceedings in the 1972 inquest were all part of an attempt to cover up or conceal the truth concerning Timol's death. This view is supported by the evidence of Dutton and Erasmus as well as the contradictions and improbabilities appearing in Rodrigues's version.

307. In the first instance, there is no evidence explaining why the police failed to hold an administrative inquiry in terms of the Police Act and Regulations, to determine whether any member of the police had contravened the Regulations by allowing Timol to escape while in police detention or custody. Such inquiry was never held. Sons further testified that it was totally against policy and the standing orders to leave a detainee, more so one of high profile, in the care of a single officer, let alone a salary clerk. There had to be no less than two police officers with a detainee at a given time. This view is confirmed by all former detainees held with Timol that there were always two or more members of the Security Branch in their presence, at any given time, rotating in teams. The statements of the police in their affidavits attest to the fact that they operated in pairs. These would be Kleyn and Thinnies (*arresting officers*); Van Wyk and Bean (*interrogators*); Gloy and Van Niekerk (*interrogators*); Bouwer and Louw (*overnight guards*); Liebenberg and Van Rensburg (*Investigators*) and Ras and Van Rensburg (*Investigators*). Why then was Rodrigues left alone with Timol, if his version is to be accepted as true? Having regard to Sons' evidence, it was against the regulations to leave a detainee under the care of one member of the Security Branch.

308. There was general substandard and sloppy investigation of the death of Timol by Buys and his team. According to Dutton, Buys, in conducting the investigation, broke every rule in the crime detection book. As stated, before taking statements from witnesses at the commencement of the investigation, Buys had claimed in the media that Timol had committed suicide. He personally commissioned the affidavits of witnesses, including that of Rodrigues as an investigator. During the 1972 inquest, while under cross examination, Buys collapsed and had to leave the court for medical attention. He never

returned to complete his cross examination but was able to resume work.

309. Dutton further testified that Buys' investigation of the crime scene was a disaster as it is littered with errors that suggest, on the police's own version, disregard of standard procedures at a crime scene. No effort was made to obtain forensic evidence on the ground where Timol fell as well as in room 1026; there was no cordoning of the crime scene; no photo of the body on the scene; no marking of the position of the body; no clothes and sample blood stains examination; no plan with measurements of the scene and no measurement of the depth of indentation where the body landed. No ambulance services or paramedics were summoned. Practically no forensic evidence was gathered.
310. Boffard testified that the removal of Timol's body from the shrubs could have accelerated his demise. Further, the removal of the body from the ground floor to the 9<sup>th</sup> floor before arrival of medical attendants and crime scene forensic investigators amounted to tampering with evidence.
311. Buys took statements only from members of the Security Branch who arrested, detained and interrogated Timol as well as those who assisted in the investigation of Timol's death. No attempt was made to obtain statements from civilian eye witnesses, other members of the Security Branch who were not involved in the interrogation of Timol, Uniformed Branch members at the reception next to where Timol fell and black members of the Security Branch.
312. The personal file of Rodrigues, as Dutton testified, reveal that he surprisingly received a commendation from the Commissioner of Police after he testified in 1972, although he had no record of having

distinguished himself as an outstanding officer in the performance of his duties. Such accolades from the Commissioner were a rare occurrence. Rodrigues was never promoted and he resigned two days after the delivery of the judgment of the 1972 inquest;

313. The evidence of Dutton and Erasmus corroborates that of the detainees that it was general practice for the police to torture detainees to a point of death. In the instance of death in detention, a cover-up story would be implemented so as to shield police from blame. This cover-up story would be handled by a unit within the Security Branch known as "*resident sweepers*". Later after Timol's death, Gloy who by then held the rank of Colonel during or about 1977 was part of the unit to cover up activities of members of the Security Branch who had contravened the law.

314. In their view, both Erasmus and Dutton admit that torture, including brutal assaults experienced by detainees were common occurrence and that there is no reason whatsoever to believe that Timol was handled differently. His death was a cover-up. In order to implement this cover-up strategy, the assistance of some selected members of the prosecuting authority, medical profession and magistracy were roped in to be part of the sham. Officials from these professions were carefully selected to support a cover-up version in the case of any judicial proceedings.

### **The view of this Court**

315. Considering what has been stated above, this court is of the view that there is no merit or credibility in the evidence of Rodrigues and that of members of the Security Branch on their version. The version was clearly fabricated to conceal the real truth as to what caused Timol to fall. The Court rejects this version.

316. The evidence of the 2017 re-opened inquest, unmasked the cover up, but due to the absence of the interrogators who have all passed on, the real events leading to the push could not be established. However, the evidence *prima facie* and logically points out that at the time Timol was pushed either out of the window of room 1026 or at the roof top, he was in the company of members of the Security Branch in charge of his interrogation on duty. He could obviously not have been in a cell. These members were at least Gloy and Van Niekerk, as their police file records show and the evidence of Bouwer and Louw confirms. They were on duty at that time. The Court is unable to establish on the evidence whether there was anyone else with them.

317. It is the Court's *prima facie* view that the push occurred during interrogation under circumstances where the Security Branch involved, resorted to torture. The torture on Timol was applied with a view to extract information. Counsel for the family of Timol submits that the Security Branch are guilty of murder. Murder is committed intentionally (direct intent) or through *dolus eventualis*. There is no evidence supporting the view that the Security Branch had direct intent to commit murder. There are theories suggesting that possibility but no evidence to back that up. However, the evidence support murder through *dolus eventualis*. *Dolus eventualis* is present in instances where “ *the perpetrator foresees the risk of death occurring, but nevertheless continues to act appreciating that death might well occur, therefore ‘gambling’ as it were with the life of the person against whom the act is directed.*”<sup>35</sup>

318. There are four reasons from the evidence why the Court is of the view that the members of the Security Branch interrogating Timol had the

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<sup>35</sup> Director of Public Prosecutions, Gauteng v Pistorius 2016 (2) SA 317 (SCA), paragraph 26

requisite intent in the form of *dolus eventualis* to commit murder. Firstly, the methods of torture they applied on Timol's co-detainees were so brutal<sup>36</sup> that there was an element of recklessness with the manner in which they occurred. Secondly, the injuries on Timol sustained *ante mortem*, 35 in all, with various degrees of severity, demonstrate that there were no boundaries of respect for human life. Thirdly, the police on their own version removed the injured Timol from where he landed immediately after the fall, without summoning medical assistance, clearly in order to conceal the crime. The very act of his removal from the scene as he was alive, may have accelerated his demise due to the police's reckless conduct at the scene. Fourthly, there was a history of detainees having died in detention, which seemed not to have any deterrence on their conduct. Van Niekerk, one of Timol's interrogators on the day he died, already had a record of brutality at that time, which included convictions of two counts of assault (in which the victim died) and multiple complaints of serious assault and torture, in which he and Gloy were accused of. These referred to the assault on detainees with iron rods and electric shocks, some which occurred months before their interrogation of Timol. One such incident was in February of 1971. It is thus probable, on the evidence, that the Security Branch foresaw that their methods of interrogation carries the risk of death occurring, but nevertheless persisted unrestrained with the torture, appreciating that death might well occur.

319. The possibility of negligence is discounted on the basis that the police went out of their way to cover up the incident by fabricating suicide, rather than admit the incident as an accident, if it was so. There are few theories that were explored in argument as to how Timol was pushed, but due to absence of evidence, the Court cannot accept and

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<sup>36</sup> Essop was admitted in a comatose condition at hospital while Naik had no control of his hands after the 'helicopter method'.

rely on them. . However, Timol did not jump as alleged. He was pushed by someone and there is thus a case that members of the Security Branch conducting interrogation at that time had to answer. Timol was in their custody as a detainee. They had complete control over him and they thus owed him a duty of care, for which they should have been held to account.

## **CONCLUSION**

320. Having regard to the totality of the evidence of the 1972 inquest and the 2017 re-opened inquest, this Court concludes thus:

320.1 After his arrest on the night of 22 October 1971 and throughout the weekend, continuing to Monday 25, Tuesday 26 and Wednesday 27, Timol was interrogated by members of the Security Branch acting in teams and taking turns. This interrogation took place in Room 1026 and Timol, contrary to his detention warrant, was kept in that room and not once taken to a holding cell;

320.2 As with all other detainees who were arrested with and after him during the same weekend and in John Vorster Square, Timol was tortured by the interrogating members of the Security Branch in order to extract information out of him;

320.3 The torture included physical assaults which resulted in severe injuries. The injuries referred to were sustained before the fall and are distinct from those he sustained on his fall;

320.4 On 27 October 1971, Timol's interrogation was conducted by Gloy and Van Niekerk. At the time Timol fell, he was under the care of at least Gloy and Van Niekerk;

- 320.5 The personal file of Van Niekerk indicates how he had been implicated and facing charges together with Gloy in the assault and murder of detainees. Some of these occurred prior to the death of Timol while others continued even after the death of Timol. Thus on the day Timol died, it was during their turn to interrogate him and the records reflect that both were therefore in room 1026;
- 320.6 Consequently, the allegation by the Security Branch members that Timol was not assaulted is not true. Further, the conclusion by the magistrate that Timol was treated in a civilised and humane manner is also not correct;
- 320.7 The trajectory evidence by Moodley excludes the possibility of Timol having either dived or jumped out of the window of room 1026 on the day he fell. Instead, the trajectory calculations support the view that the cause of the fall was that Timol was pushed either from the window of room 1026 or from the roof of John Vorster Square building;
- 320.8 Three independent witnesses put the time of Timol's fall as mid-morning on 27 October 1971. This is in direct contrast to Rodrigues' evidence that Timol fell between 15H45 and 16H00. This Court accepts that Timol fell in the mid-morning and that Rodrigues, if ever he was in room 1026 later in the afternoon, was brought there to legitimise the cover up narrative;
- 320.9 The substandard and sloppy manner in which the investigation of Timol's death was conducted by Buys and his team supports the view that there was a clear intent to cover-up the incident through a fabricated version of suicide;

320.10 Timol's fall to the ground was as a result of being pushed either from window of room 1026 or from the top of the roof of the John Vorster Square building;

320.11 Consequently, Timol did not meet his death because he committed suicide. Timol died as a result of having being pushed to fall, an act which was committed by members of the Security Branch with *dolus eventualis* as the form of intent, and *prima facie* amounting to murder;

320.12 There is *prima facie* evidence implicating Gloy and Van Niekerk as the police officers who were interrogating Timol when he was pushed to fall to his death. Rodrigues, on his own version, participated in the cover up to conceal the crime of murder as an accessory after the fact of that murder, and went on to commit perjury by presenting contradictory evidence before the 1972 and 2017 inquests. A recommendation is made to have him investigated and prosecuted for these offences.

321. Ordinarily in an inquest, the court makes its finding in terms of section 16 (2) of the Act. This finding is made narrowly in answer to four questions. These questions are about (a) the identity of the deceased; (b) the cause or likely cause of death; (c) the date of death; and (d) whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person.

322. In case of an inquest re-opened in terms of section 17A, subsection 3 (b) thereof provides thus:

“ (3) A judge holding an inquest that has been re-opened in terms of this section.....

*(b) shall record any finding that differs from a finding referred to in section 16 (2), as well as the respect in which it differs;”*

323. The finding by the magistrate in this instance is the finding referred to in section 16 (2). At the end of the 1972 inquest, the Magistrate made the following findings in terms of Section 16 of the Act:

*“(a) The identity of the deceased is Ahmed Essop Timol, an Asian male, 29 years old, born South African, teacher by profession.*

*(b) Date of death: 27 October 1971.*

*(c) Cause or probable cause of death: the deceased died because of serious brain damage and loss of blood sustained when he jumped out of a window of room 1026 at John Vorster Square and fell to the ground on the southern side of the building. He committed suicide.*

*(d) No living person is responsible for his death.”*

324. In regard to item (a) in the paragraph above, This Court is of the view that even in death, Timol deserves the dignity of the restoration of his citizenship, like all South Africans. He entered the struggle and gave his life for that. This Court will not identify him as “*an Asian male*”, but differently as a South African citizen.

325. Item (b) in the findings of the magistrate, the date of death 27 October 1971, remains unchanged.

326. Item (c), Cause or probable cause of death. The finding by the magistrate on the cause of death follows the evidence of Schepers who buckled under cross examination. Initially when he testified, he opined as it appeared in the autopsy report, that the cause of death

was “*Multiple injuries*”. Under cross examination he stated the cause of death as serious brain damage and loss of blood, which the magistrate accepted. This Court will follow the opinion of Naidoo that the death was caused by the *massive head (brain) and chest (vital centre damage and compromised respiration) injuries*. Further, and for reasons already stated in this judgment, this Court will record a different finding to that of the magistrate when he found that Timol jumped out of the window of room 1026 at John Vorster Square, fell to the ground on the southern side of the building and that he committed suicide. This Court came to a different conclusion that Timol did not “*jump out of the window of room 1026*”, but was either pushed out of the window of room 1026 or rolled from the roof of the John Vorster Square building. Thus, he did not commit suicide but was murdered.

327. This Court will also record a different finding to that of the magistrate in regard to item (d) of his findings. He found that “no living person is responsible for Timol’s death”. It is ironic that 46 years after the death of Timol, the magistrate’s finding is partly correct, as most of the main perpetrators this Court would have recommended for investigation and possible charges have since passed on.

328. The finding by this Court is that all members of the Security Branch involved with the interrogation of Timol or keeping guard over him in room 1026 are collectively responsible for the injuries sustained *ante mortem*. They were supposed to keep him in the police cell as the warrant for his detention stated. They did not do so, but kept him in room 1026 to conceal the torture.

329. In the first instance Timol was in their custody and they had a duty of care over him which they failed to exercise. Secondly, the Security Branch denied knowledge of the *ante mortem* injuries on his body,

which denials this Court found were a cover up. The Security Branch involved in the interrogation of Timol, inflicted the injuries through systematic and continuous torture. They intentionally and unlawfully applied brutal methods of torture on Timol.

330. This Court's *prima facie* finding is that members of the Security Branch who were interrogating Timol on the day he died, through an act of commission or omission, murdered Timol. This they committed through *dolus eventualis* as the form of intent.

331. Rodrigues placed himself on the scene as a party to the cover up to conceal the truth. He thereby *prima facie*, by his conduct became an accessory after the fact of murder. An accessory after the fact is " a person who renders assistance to someone else (perpetrator) who has committed an offence." <sup>37</sup>Corbett JA in **S v Morgan**<sup>38</sup> opines that the association of the accessory with the crime should take the form of helping the perpetrator evade justice. This is precisely what Rodrigues, on his own version, did.

332. Els should be investigated for misleading the Court that he only knows of the allegation of assault on detainees from the media. The police file records reflect that he was in attendance as one of the interrogators when Naik was subjected to the "helicopter" method of torture for which he lost the use of his hands.

333. Sons should also be investigated for testifying under oath that he heard of detainees' assault from the media. There are five witnesses who filed affidavits to dispute his statement.

334. Rodrigues should be investigated for making contradictory statements whilst under oath. He has a previous conviction on perjury.

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<sup>37</sup> WA Joubert, "**The Law of South Africa**", Volume 6 paragraph 136.

<sup>38</sup> 1993 2 SACR 134 (A).

## FINDINGS

335. Therefore, in terms of section 17A (3) (b), read with section 16 (2) of the Act, the Court finds as follows:

- (a) The deceased is Ahmed Essop Timol, a South African citizen aged 29 at the time of his death;
- (b) The cause of death is massive head (brain) and chest (vital centre damage and compromised respiration) injury;
- (c) The date of death remains unchanged as 27 October 1971;
- (d) Timol's death was brought about by an act of having being pushed from the 10<sup>th</sup> floor or roof of the John Vorster Square building to fall to the ground, such act having been committed through *dolus eventualis* as the 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 he was pushed to fall to his death. Rodrigues, on his own version, participated in the cover up to conceal the crime of murder as an accessory after the fact, and went on to commit perjury by presenting contradictory evidence before the 1972 and 2017 inquests. He should accordingly be investigated with a view to his prosecution.

336. In terms of Section 17A (3) (c) of the Act, the record of the proceedings is hereby submitted to the Director of Public Prosecutions.

## Recommendations

337. The 2017 re-opened inquest, the first of its kind in South Africa, has revealed a number of lessons to be learned. Of importance is that all branches of the state have to ensure that the boundaries set by the Constitution for the respect of Human Rights and dignity should never be crossed. It should be the task of all branches of the State to begin to develop a culture of intolerance to any form of violation of Human Rights.

338. One of the draw-backs with this re-opened inquest is the fact that the reopening came late in the day when most of the members of the Security Branch involved with the interrogation of Timol and the investigation of Timol's death had passed on. In addition, the Court had to do with the mysterious disappearance of part of the 1972 inquest record that dealt with the evidence of the police officials in Court, and in particular page 3 of the affidavit of Rodrigues which, according to the magistrate's judgment, explained how Timol fell. Consequently, the key police witnesses who would have been called to testify again in regard to the events preceding the fall were not available. It is therefore important for the future that the state ensures that the records of inquests are preserved, considering the fact that the Act provides for re-opening without any limitation as to time.

339. The inquest also revealed that there are many more families<sup>39</sup> who are seeking closure on the unanswered questions concerning the death of their relative in detention. They, like all families whose relatives died in detention, need healing. They need closure.

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<sup>39</sup> The Judge's Registrar, Mr Lesibana Makwela received a number of inquiries from persons who needed assistance to find closure in cases of their relative having died in detention.

340. It is thus the view of this Court that the families whose relatives died in detention, particularly those where the inquest returned a finding of death by suicide, should be assisted, at their initiative, to obtain the records and gather further information with a view to have the initial inquest re-opened. The Human Right Commission, working in consultation with the law enforcements agencies, should be sufficiently resourced to take on this task.<sup>40</sup>

341. It will be remiss of this Court not to address an issue on which Bizos' evidence put a spotlight. This is the impropriety role played by some in the magistracy, prosecuting authorities and medical experts in the past inquest proceedings. Bizos's evidence reveals the role of some of these public officials in being complicit in exonerating members of the Security Branch from the crimes they committed. The 1972 inquest into the death of Timol is one such example. From the outset, it had to take a Court order to allow Timol's family and their lawyers access to case documents, before the inquest commenced. The evidence of the 1972 inquest furthers demonstrate how the prosecution made no effort to obtain evidence other than that of the police and the magistrate attempting to explain away the ante mortem injuries, without any shred of evidence supporting his statement about a brawl.

342. Bizos also makes reference in his publication,<sup>41</sup> to the inquest into the death of Steven Bantu Biko. The much publicised and documented unprofessional conduct of the doctors<sup>42</sup> who testified in that inquest, illustrates the point. Doctors, like lawyers take an oath, in their profession it is a Hippocratic Oath.

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<sup>40</sup> Without being prescriptive, it would assist if the Human Rights Commission and IPID are sufficiently resourced to undertake the task of preparatory work, in consultation with the NPA, for the re-opening of such inquest at the request of the families concerned.

<sup>41</sup> **"No one to Blame"**

<sup>42</sup> Dr Lang and Dr Tucker

343. Every professional lawyer and public official survives on integrity. Magistrates and prosecutors are lawyers participating in the administration of justice and are expected to discharge their functions in terms of the Oath they were sworn to uphold.<sup>43</sup> For all public office bearers of the State, an oath is sacrosanct. Apart from their knowledge of and experience in the practice of law, lawyers, in particular judicial officers, are expected to bring to bear their honesty, independence, personal and professional integrity and ability to act without fear or favour in the administration of justice. It is not ethical and proper on the part of a judicial officer to preside over or decide cases either out of fear; or in favour of a person, entity or institution; or in expectation of promotion or reward; or in advancement of some real or perceived interest. Judicial officers have to be loyal only to the Constitution and the cause of justice. Public officials in the administration of justice are enjoined by the law to jealously guard against casting aspersions on the integrity of the judicial system, by conducting themselves in a manner contrary to their oath of office. Such conduct has no place in a Constitutional Democracy.

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**S P MOTHLE**  
**Judge of the High Court.**  
**Gauteng Division, Pretoria.**

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<sup>43</sup> This Court acknowledges that by and large, in particular since the advent of the democratic dispensation, most magistrates, prosecutors and doctors in public service discharge their functions ethically and in accordance with the oaths they took. The views expressed do not include all magistrates, all prosecutors and all doctors who take their oaths seriously.

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