

Perpetrators are escaping justice

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THE ANC leadership will not get away with ignoring the political interference that has allowed apartheid criminals to escape punishment for the murders they committed.



What is left to do for the families of apartheid's victims to convince the ANC government that the biggest reason for the slow prosecution of these cases has been the continued, wilful political interference of high-ranking party members in the work of the National Prosecuting Authority (NPA)?

To whom must these families, their legal representatives and the organisations fighting for finalisation of the cases that emanated from the Truth and Reconciliation Commission (TRC) still appeal? These questions arise in the light of recent remarks by ANC legal adviser Krish Naidoo, a member of the ANC joint committee established last year to help speed up Trc-related prosecutions. A former human rights lawyer who represented many anti-apartheid activists in the 1980s, Naidoo was interviewed in February for an Al Jazeera documentary about the Cradock Four case.

The documentary, *My Father Died For This*, was broadcast last month. Naidoo said "there is no reason, no explanation" for why there have been no successful prosecutions of TRC cases in 27 years of democracy.

"It could have been lack of focus, it could have been bad planning. I am not aware of any agreement regarding non-prosecution of apartheid-era crimes. Some matters would have slipped through the cracks and the Cradock Four case would have been one of them."

In a *City Press* article on May 23 about University of Western Cape law students volunteering to help with Trc-related investigations, Naidoo said: "Since 2003, insufficient attention has been paid by the ANC to giving that closure to families of apartheid-era crimes. The ANC has no knowledge of whether such lethargy arose from political interference." These comments could be those of someone grossly misinformed about an issue that is of fundamental importance to the task of the committee on which he serves. Or, they could be indicative of the ANC'S refusal to acknowledge the political interference that a full Bench of the high court in Johannesburg and the NPA have accepted in proceedings related to the prosecution of former security police clerk Joao Rodrigues for his involvement in the death of anti-apartheid activist Ahmed Timol.

The allegations of interference first surfaced in 2015 in affidavits made by Anton Ackermann, former head of the NPA'S priority crimes litigation unit (PCLU) – established to deal with TRC cases – and former national director of public prosecutions Vusi Pikoli. They were submitted as part of a case brought by Thembi Nkadimeng to compel the NPA to prosecute those responsible for the 1983 kidnapping and murder of her sister, Nokuthula Simelane, an Umkhonto we Sizwe cadre.

The affidavits painted a picture of sustained interference by members of the Thabo Mbeki administration – including former minister of justice and correctional services Brigitte Mabandla and the late former police commissioner Jackie Selebi – in the NPA'S mandate to bring to book perpetrators who had either not applied for TRC amnesty or not been granted it. The media reported widely on them and they were subsequently submitted into evidence at the reopened inquest in 2017 into the death of Timol as well as the reopened inquest into the death of Neil Aggett that began last year.

During the hearing of Rodrigues's appeal in 2019, former PCLU member Chris Macadam submitted a further affidavit giving more details of political interference. Macadam's colleague, NPA prosecutor Torie Pretorius, admitted and accepted the role political interference played in the prosecution of the TRC cases, in an affidavit he submitted during the same hearing.

The Johannesburg high court judgment in the Rodrigues matter expressed dismay at the extent to which members of the executive had blatantly tried to interfere in TRC prosecutions. It directed that those implicated in the affidavits be brought to the attention of the national director of public prosecutions for action.

The judgment spurred the victims' families and a group of former TRC commissioners to write a letter to President Cyril Ramaphosa in February 2019 calling on him to appoint a commission of inquiry to investigate the allegations of political interference. No response was received from the Presidency and the call was repeated in subsequent letters to Ramaphosa last year and, most recently, last month.

A request for comment was redirected to the Justice Ministry, whose spokesperson, Chrispin Phiri, said:

“The concerns raised (in the letters to the president) were reflected in the judgment of the high court in the Rodrigues matter. In light of this judgment, the ministry is in the process of developing a mechanism which will implement the court's directions.”

Lukhanyo Calata, son of Fort Calata, one of the Cradock Four, prepared a presentation in May 2019 for the Zondo Commission. He asked it to investigate the capture of the NPA with regard to TRC prosecutions, but it was unable to include the matter in its investigation into state capture.

In addition to the issue of political interference being widely reported in the media, deliberated in the courts and reaching the ears of the president, the Foundation for Human Rights (FHR) and family members of apartheid victims say it has been presented to the ANC'S joint committee members, including Naidoo.

They questioned Naidoo's comments in the documentary in a letter sent to him and task team chair Jessie Duarte, as well as other members of the ANC'S national executive com-

mittee, on May 14. They demanded to know whether his comments represented the ANC'S position and if they were a deliberate attempt to mislead the public.

Naidoo said his comments "reflect the ANC'S position". In response to questions about his knowledge of the affidavits in the Simelane case and the allegations made therein, as well as the high court judgment in the Rodrigues matter and the affidavits submitted as part of those proceedings, Naidoo said: "I am not aware of these events and allegations of political interference but recall they were made by FHR members from time to time in meetings held with the ANC delegation, specifically in October last year."

Naidoo said it is "important to unravel this allegation of political interference and establish where it is coming from".

FHR director Yasmin Sooka said there was no way that Naidoo and the ANC "can say that they are unaware of this stuff. And we have proof of the fact that we've sent them this documentation".

Sources confirm that Naidoo was at a meeting last year in which a document containing a timeline of incidents of political interference between 2003 and 2019 was presented to the joint committee. Calata's legal team prepared it as part of his presentation to the Zondo Commission. It also named the ANC members and former government officials who had been implicated.

Asked whether he had seen the timeline, Naidoo said the FHR had made five presentations. "The FHR was not very happy with the role of the government and the ruling party in resolving apartheid-era crimes. There was mention of political interference, but the main purpose of the meeting was to solicit ANC assistance to access the President's Fund to enable the FHR to pay for legal services and to persuade the government to establish a prosecution unit to deal with the cases expeditiously."

For Calata, whose family is still waiting for a decision from the NPA on whether or not it will prosecute those responsible for the murders of the Cradock Four, Naidoo's comments "speak to a lack of care. My father died pursuing the interests of the ANC".

"In black culture, we recognise our ancestors," he said. "When something happens, good or bad, we give tribute to them. Now, when the ANC does not govern in the honour of the people that got it to where it is, when the ANC ... fails to govern in honour and in memory of the people that laid down their lives for our freedom, it ends up being in this position ... where a legal adviser of the ANC can say, 'Oh, but the Cradock Four murderers, that case slipped through the cracks'."

While Calata, Sooka and others have acknowledged that the ANC'S task team is a step in the right direction, they are adamant the issue cannot be ignored. Political interference led to significant delays in the prosecutions of these cases and the years of inaction, in many instances, allowed perpetrators to escape justice.

The documentary makers told Calata recently that Eric Taylor died in 2016. He was thought to be the last surviving member of the group of Security Branch officers who were directly responsible for murdering the Cradock Four and were denied amnesty by the TRC. Eric Winter, the 73-year-old former head of the Security Branch in Cradock, who did not apply for amnesty but gave the orders that led to the murders, is on his deathbed with cancer.

Calata says he and other family members “need to know why these cases have not been prosecuted”.

He is also tired of waiting for the NPA to make a decision. “Here we are a year later and we are still not any closer to a decision. We’re going to court unless they come tomorrow with the decision. As long as there’s still one person who can still be held accountable for the murders of the Cradock Four, that’s what we will pursue.”

This is an edited version of Smith’s article first published in New Frame.