

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

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

AFFIDAVIT OF YASMIN LOUISE SOOKA

I, the undersigned,

YASMIN LOUISE SOOKA

do hereby make oath and state:

1. I am an adult female and I reside in Johannesburg. I am a member of the Foundation for Human Rights ("**FHR**") Supervisory Board situated at Metal Box Building, 7th Floor, 25 Owl Street cnr Stanley Avenue, Auckland Park, Johannesburg.
2. I am a former Commissioner of the South African Truth and Reconciliation Commission ("**TRC**" or "**the Commission**") and the Sierra Leone TRC. Since 2016, I have served as the Chairperson of the United Nations Commission on Human Rights in South Sudan.
3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
4. I depose to this affidavit to assist the Judicial Commission of Inquiry into stopped TRC Investigations and/or Prosecutions ("**the Commission**") to address paragraphs 1 to 1.3.2 of the terms of reference of the Commission.
5. During 2012, I approached Reverend Frank Chikane with a request to meet him to discuss the applications for political pardon in respect of those who had been convicted for his attempted murder.

Plea and sentence agreement

6. On 17 August 2007, former Police Minister, Adriaan Vlok, former Commissioner of Police, General Johann van der Merwe, Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden

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entered into a plea and sentence agreement for their roles in the 1989 poisoning of Rev. Frank Chikane.

7. They pleaded guilty in exchange for suspended sentences in terms of section 105A of the Criminal Procedure Act. Vlok and Van der Merwe were sentenced to ten years in prison suspended for five years, while the other three received five-year prison sentences, suspended for five years. A copy of the plea and sentence agreement is already before this Commission in Calata Group Bundle 1.

Special Dispensation on Political Pardons

8. At a joint sitting of Parliament on 21 November 2007, President Thabo Mbeki announced a special process for the handling of pardon requests made by *"people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC."* According to President Mbeki the aim was to assist the nation in resolving the *"unfinished business"* of the TRC.
9. The use of the pardon power to accommodate perpetrators who had spurned the TRC amnesty process was in line with the recommendations of the Amnesty Task Team that were made in 2004.
10. President Mbeki asked each political party represented in Parliament to appoint a representative to serve on a Reference Group (**RG**) which was charged with considering pardon requests and submitting recommendations to him. Applications for political pardons opened in January 2008. The Chairperson of the RG was Dr Tertius Delport.
11. More than 2000 persons applied for a political pardons and the RG recommended to the President an initial list of some 150 persons for pardon. Amongst those who were recommended for pardon were those convicted for the attempted murder of the Rev. Chikane.
12. The RG rejected requests from victims, families and civil society to make inputs into the political pardons process and as a result in March 2009 they brought an urgent application in the Pretoria High Court to interdict the President from issuing any pardons until they were able to participate in the process. On 28 April 2009, Seriti J granted an interim interdict restraining the President from proceeding with the special dispensation for political pardons.

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13. On 2 June 2009, President Jacob Zuma and Ryan Albutt, one of the AWB members convicted for carrying out a campaign of violent terror against black people in Kuruman approached the Constitutional Court to overturn the interim interdict. In February 2010, the Constitutional Court ruled that no political pardon could be issued without first affording the victims a hearing.
14. Attempts were made thereafter by the Ministry of Justice to resurrect the Special Dispensation on Political Pardons by allowing victims and interested parties to make representations. The process was reopened to permit interested persons and parties to participate and make submissions.

Objections to the pardon applications

15. Several civil society groups submitted representations to the RG opposing the grant of pardons to those behind the poisoning of Rev Chikane. Their central objection was that the applicants had not disclosed key facts around the program to eliminate anti-apartheid activists.

Refusal to disclose the truth

16. The applications for pardon by Vlok, Van der Merwe and the others were carefully crafted and appeared to deliberately avoid implicating any living person. For example, Van der Merwe in his application referred to a meeting held in 1987 at the Headquarters of the South African Defence Force (**SADF**) to discuss actions to be taken against various targets. Present at the meeting were representatives of the SADF; Security Branch, National Intelligence, Military Intelligence and the SADF Special Forces. Van der Merwe only disclosed the names of the late General Kat Liebenberg (then Chief of the Army) and the late Brigadier Broodryk (2IC at the Security Branch).¹ No names of living persons were revealed.
17. At the meeting it was disclosed that the instruction to murder anti-apartheid activists, including Reverend Chikane, came from a "*higher authority*". Van der

¹ Para 37, Submission on Behalf of the South African History Archives, the Human Rights Media Centre, International Center for Transitional Justice in Respect of Issues Arising From: Applications For Political Pardon: J V Van Der Merwe, A J Vlok, G J L H Otto, C L Smith and H J Van Staden. (Enclosed as part of the Cross Examination Bundle).

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Merwe and Vlok did not disclose who this "*higher authority*" was.²

18. Van der Merwe indicated that the meeting was told that this higher authority instructed that "*drastic steps*" using the "*full capacity of the state*" had to be taken against "*certain political activists*". In so-called "*extreme cases*" they could be "*eliminated*".³ The applicants did not disclose what constituted 'extreme cases', although it is evident that it included civilians, non-combatants and even men of the cloth, such as Rev. Chikane.
19. According to Van der Merwe the hit list discussed at that meeting was compiled by Military Intelligence and that internal targets were the responsibility of the Security Branch while external targets were to be handled by the SADF.⁴
20. Van der Merwe only disclosed two names on the list, the one being Chikane and the other, the late Joe Slovo (who at the time was based outside South Africa).⁵
21. Since the preferred method of elimination was to give the impression of a natural death (as in the case of Chikane) the absence of disclosure made it difficult if not impossible for investigators and researchers to identify other individuals who may have been targeted through similar method.⁶ It is highly likely that several of the other targets were eliminated in a manner dressed up to look like natural or accidental deaths.
22. According to Van der Merwe, following the meeting he reported to Vlok and gave him a copy of the hit list. Vlok was also in position to disclose names on the list but declined to do so.⁷
23. Vlok and Van der Merwe set up a unit "*for the execution of the directive*" and recruited various officers, to carry out the unlawful operations described in the plea agreements, including Otto, Smith and Van Staden. These 3 were also in

² Id, para 38

³ Id, para 39

⁴ Id, para 40

⁵ Id, para 41 – 41.3

⁶ Id

⁷ Id, para 42

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possession of names on the list but refused to disclose any names besides Chikane.⁸

24. None of the pardon applicants disclosed the name of the unit, its members and the *modus operandi* it employed.
25. It is known that on 14 July 1986 Vlok briefed the State Security Council ("**SSC**") briefed the meeting on steps to be taken against "*politically sensitive persons*." At the SSC meeting of 8 September 1986 (SVR 14/86) under agenda-item 2: 'Report on the National Emergency', item (g) was titled "*the list of politically sensitive persons*". It was recorded that the "*list of politically sensitive persons had to be shortened and **methods other than detentions must be considered.***" Vlok was "*tasked*". At the SSC meeting of 22 September 1986 (SVR 15/86) under agenda-item 3d: 'Report on the National Emergency' it was recorded at item (d) that the "*list was accepted after discussion.*"⁹
26. Vlok never disclosed who was on the "*list of politically sensitive persons*"; what the steps taken against them "*other than detentions*" and whether this list was the same list discussed with the SADF a year later.
27. This truth is part and parcel of South Africa's history. It would have been immensely important for the families and communities of those individuals who did perish from such actions to know exactly what happened to their loved ones. However, Vlok, Van der Merwe and the other specifically chose to conceal the truth from South Africans.
28. Since they refused to disclose the truth the South African History Archives, the Human Rights Media Centre and the International Center for Transitional Justice filed a submission opposing their applications for pardons, stating that:

"A granting of pardon in these cases will seriously undermine and retard national reconciliation since the applicants have specifically chosen to deceive South Africans and deny the nation important truths of South Africa's past."¹⁰

⁸ Id

⁹ Id, paras 41.6 – 41.7

¹⁰ Id, para 96.4



Approach to Rev Chikane

29. Those opposing the pardons believed it would be particularly powerful if Rev Chikane called upon those who tried to kill him to come clean and speak the truth. It was decided to approach him to make this call and to ask him to oppose the applications until they provided answers.
30. I was asked to make this approach. I set up this meeting during 2012 and arranged for the meeting to take place at the Protea hotel in Melrose Arch in Johannesburg. I was accompanied by counsel for the families, Howard Varney.
31. At this meeting I explained the critically important truth that was being specifically withheld by Vlok, Van der Merwe and the others, as set out above. I also pointed out that there are probably many families whose loved ones were murdered in similar operations, but who will never know the truth, unless the applicants disclose in full.
32. I explained that in my view if he took a public stand and called for the truth, Vlok and the others might be moved to disclose the full truth. In which case, the opposition to their pardons could be withdrawn. This would have been a powerful and symbolic act of reconciliation and healing.
33. I urged him to consider opposing the pardon applications, unless full disclosure was made. I said this would be in the best interests of the victims, families and in the greater interests of South Africa. However, Rev. Chikane refused to take a stand in the matter. He also refused to oppose the pardon applications arising from his case. He would not be moved.
34. When I asked him why he was unwilling to assist, he said that he had been poorly treated since he left government, but he did not explain why such treatment prevented him from taking a stand.
35. I was bitterly disappointed with his refusal to stand with the families and victims of apartheid crimes who were waiting for answers.



Handwritten signature and a large stylized number 4.

36. Rev Chikane has asserted before this Commission that his principal concern has been the pursuit of truth.¹¹ I consider it appropriate to place before the Commission my account of our 2012 meeting, as it is relevant to his claim that Vlok and Van Der Merwe had "*came out of the woodwork, took off their masks and moved from their 'strategic lies'*".¹² In fact as late as 2012 they were still engaged in a cover up of the truth.
37. His refusal to take a stand in pursuit of important truth for South Africans undermines his claim that his overarching concern was truth seeking.



YASMIN LOUISE SOOKA

Signed and sworn to before me at Johannesburg on this the 10th day of July **2020**, the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, the provisions of Government Gazette R1478 of 11 July 1980 as amended by Government Gazette R774 of 20 April 1982, concerning the taking of the oath, having been complied with.



COMMISSIONER OF OATHS

FULL NAMES:

PHYSICAL ADDRESS:

DESIGNATION:

A. S. MAYET
Commissioner of Oaths
Practising Attorney
401 Elizabeth House
18 Pritchard Street
Johannesburg

Women's Jail
Constitution Hill
Braamfontein

 10/07/2020

¹¹ Chikane statement before COI, paras 38, 45, 54, 61 and 64. Chikane transcript p 39, 40, 53, 56, 64, and 66.

¹² Chikane statement before COI, para 51.



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Apartheid: 'Time To Face The Music'



Ben MacLennan • 20 APR 2006, 14:45 • 3 min read

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It is time for politicians and security-force officers to face the music for their role in apartheid-era human rights violations, a Cape Town conference heard on Thursday.

Former Truth and Reconciliation Commission (TRC) member Yasmin Sooka said she would like to see "those who created this milieu", and not the foot soldiers, brought to book.

This will hopefully happen when the long-awaited post-TRC prosecutions get under way.



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Sooka was speaking at a Cape Town conference marking the 10th anniversary of the first sitting of the TRC.

"If you look at who actually came forward in the amnesty process, you had one minister, the former minister of law and order Adriaan Vlok, and you had a few generals," she said. "But by and large the politicians in a sense got away with it."

She said it was clear from the applications of those who did apply for amnesty from the TRC that almost all of them operated on the basis that they were doing what they were supposed to. They were not merely "bad apples" in the system.

"And they in a sense expected the politicians would cover them ... This was what the apartheid state was geared for," said Sooka. "And so I would certainly like to see us not going again for those who pulled the triggers, but rather to look selectively at some of those who were responsible for creating this environment in which criminality could flourish.

"Remember, this was not happening within the law, it was happening outside the law."

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She said it is not her job to suggest names, but there are "at least two or three people I could think of".

Sooka's comments follow the National Prosecuting Authority's (NPA) announcement of a policy on prosecuting apartheid-era crimes for which individuals were not granted amnesty. The prosecutions will be managed by the NPA's priority crimes litigation unit.

It is expected that investigations will focus on a list of more than 300 names that the TRC handed to the NPA in 1998.

However, an NPA deputy director and member of the unit, Torie Pretorius, warned that a prosecutor depends on evidence, which in turn requires good investigators. The police have yet to appoint investigators in a number of matters.

"My kingdom for a good investigator ... we don't have the investigators," he told the conference.

Dave Steward, spokesperson for the FW de Klerk Foundation, said there had been no clear agreement on amnesty during the negotiations that led to the 1994 election.

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Many former members of the security forces did not apply for amnesty because they feared they would not get a fair hearing and would not be afforded the full spectrum of rights they would enjoy in a court of law.

He said no one supported the idea of immunity, and he agreed that those who committed acts of "egregious" violence should not be let off the hook.

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"I'm not saying there should not be prosecutions," he said. "I'm just saying it should be an even-handed process if we are going to achieve reconciliation and not widen differences between our communities."

He asked how many of the 300 names submitted by the TRC were from the "struggle side", and said the TRC itself had not investigated violations by members of the liberation movements with the same zeal as those committed by the security forces.



A substantial part of the constituency De Klerk represented did not believe the TRC had been balanced, or that it promoted reconciliation.

He also said the TRC process had not been about apartheid as such. "It was about the conflict of the past," he said. — Sapa







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**IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)**

CASE NO:

In the matter between:

THE STATE

and

1. JOHANNES VELDE VAN DER MERWE

an adult male South African citizen

2. ADRIAAN JOHANNES VLOK

an adult male South African citizen

3. CHRISTOFFEL LODEWIKUS SMITH

an adult male South African citizen

4. GERT JACOBUS LOUIS HOSEA OTTO

an adult male South African citizen AND

5. HERMANUS JOHANNES VAN STADEN

an adult male South African citizen

(hereafter referred to as the accused)

**PLEA AND SENTENCING AGREEMENT IN TERMS OF
SECTION 105A OF ACT 51 OF 1977 (AS AMENDED)**



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THE PLEA AGREEMENT:**A. PARTIES TO THE AGREEMENT:**

1. The State is the National Prosecuting Authority of South Africa and represents the complainant

2. There are five accused, namely:

JOHANNES VELDE VAN DER MERWE

ADRIAAN JOHANNES VLOK

CHRISTOFFEL LODEWIKUS SMITH

GERT JACOBUS LOUIS HOSEA OTTO and

HERMANUS JOHANNES VAN STADEN;

B. AUTHORISATION:

3. The prosecutor who represents the Prosecuting Authority in this matter is **Adv AR Ackermann SC**, a Special Director in the Priority Crimes Litigation Unit in the Office of the National Prosecuting Authority, who is duly authorised to enter into this plea agreement on behalf of the State. The relevant authorisation is attached as **Annexure A**.

C. LEGAL REPRESENTATION:

4. At all times during the plea negotiations and these proceedings, the accused have been represented by **Adv Johann Engelbrecht SC** and **Jan Wagener**, of Attorneys Wagener Muller, 833 Church Street, Pretoria, 0001.

D. THE INVESTIGATING OFFICER:

5. The investigating officer was consulted regarding this plea agreement and has indicated that he has no objection to the pleas of guilty as set out in the agreement, or to the proposed sentences.

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E. THE COMPLAINANT'S ATTITUDE WITH REGARD TO THE PLEA AGREEMENT:

6. The complainant, the Reverend Frank Chikane, has been consulted and has indicated that:
 - 6.1 He does not harbour a grudge against the accused.
 - 6.2 It is extremely important for him to have the true facts surrounding the attempt on his life disclosed.
 - 6.3 He is satisfied with the plea agreement and does not wish to make any further representations in connection with the matter.

F. THE RIGHTS OF THE ACCUSED:

7. Prior to entering into the plea agreement, the accused were duly informed about their constitutional rights..
8. They have been fully informed regarding the rebuttable presumption that they are innocent until guilt has been proved beyond reasonable doubt.
9. They were informed of their right to remain silent.
10. They were also fully informed of their right not to offer self-incriminating testimony.
11. The accused are fully aware of the fact that the Honourable Court is not bound by this plea agreement.

G. THE CHARGES:

12. The accused are charged with the following offences:

COUNT 1: ATTEMPTED MURDER

IN THAT on or about 23 April 1989 and at or in the vicinity of the then Jan Smuts Airport in the district of Kempton Park, the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the Reverend Frank Chikane, an adult male person, by way of administering a poison, to wit Paraoxon, to his clothing.

ALTERNATIVE CHARGE TO COUNT 1: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956

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IN THAT the accused, together with Wouter Basson, André Immelman and persons unknown to the State, during April 1989 and at or near Roodeplaat Research Laboratory and/or Pretoria in the district of Pretoria, unlawfully and intentionally conspired to commit the crime of murder against the Reverend Frank Chikane, and / or to assist in the commission of this offence and / or to further the commission of the offence.

COUNT 2: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956

IN THAT the accused, Wouter Basson, André Immelman and persons unknown to the State, during 1989 and at or near Roodeplaat Research Laboratory, Security Branch Headquarters in the district of Pretoria and/or other locations unknown to the State, unlawfully and intentionally conspired to commit the crime of murder of persons unknown to the State and / or to assist with the commission of such murders and / or to further the commission of such murders.

H. THE PLEA OF THE ACCUSED:

13. The parties to this plea agreement have concurred on the following:

13.1 That all the accused plead guilty to Count 1, as set out in the indictment:

COUNT 1: ATTEMPTED MURDER

IN THAT on or about 23 April 1989 and at or in the vicinity of the then Jan Smuts Airport in the district of Kempton Park, the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the Reverend Frank Chikane, an adult male person, by way of administering a poison, to wit Paraoxon, to his clothing.

13.2 That the State will withdraw Count 2 against all the accused.



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1. **FACTUAL SUMMARY OF EVENTS:**

(i) **BACKGROUND:**

(For the sole and exclusive purpose of this agreement, the accused admit the contents of paragraphs 14 to 23 as set out hereunder, although at the time the relevant offence referred to in **Count 1** was committed, they had no knowledge whatsoever thereof.)

14. During the period 1982 – 1992, the South African Defence Force ran a Top Secret project, namely Project Coast. The primary objective of this project was to develop a defensive and limited offensive chemical and biological warfare capacity.
15. Dr Wouter Basson was the project officer.
16. Due to the sensitivity of the project, front companies were used to conduct research as well as to manufacture and procure substances.
17. The front company Delta G Scientific (Pty) Ltd (hereafter referred to as "Delta G") was responsible for research and manufacture of chemical substances for the project.
18. Roo-de-plaat Research Laboratory (Pty) Ltd (hereafter referred to as "Roo-de-plaat") conducted research in the biological sphere and to a lesser extent, also carried out chemical research.
19. Dr A Immelman was a scientist employed as the head of toxicological research at Roo-de-plaat.
20. Around the mid-1980s, Dr Basson instructed Dr Immelman to, *inter alia*, carry out research on the use of toxic substances against individuals, methods of application and the traceability of such substances following administration. These toxic substances (including Paraoxon) were manufactured at Roo-de-plaat and some of them were handed over to Dr Basson.
21. In approximately 1987, Dr Basson ordered Dr Immelman to meet clandestinely with representatives of other branches of the Security Forces and to supply them with whatever substances they needed.
22. As a result of this instruction, Dr Immelman had various clandestine meetings with members of the various Security Force components. During these meetings, the needs of particular components were discussed and toxic substances were in fact later supplied to them.
23. In order to keep a record of the toxic substances that were handed over to these outsiders, Dr Immelman maintained a list (attached to the indictment


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as Annexure "A") indicating the date of delivery, the name of the substance and the volume / quantity supplied.

(ii) THE ACCUSED:

24. During the period January 1986 to September 1988, accused No 1 was the commanding officer of the SA Police Special Branch. In October 1988, he was promoted to Deputy Commissioner of Police.
25. General Sebastiaan Smit succeeded him as commander of the Security Police and thereafter, accused No 1 had no further involvement with the project.
26. During the period December 1986 to August 1991, accused No 2 was the Minister of Law and Order in the Republic of South Africa.
27. During the period relevant to the indictment, accused 3 to 5 served as police officers attached to the Security Branch.

(iii) THE VICTIM:

28. The Reverend Frank Chikane was an outspoken opponent of apartheid and the policies of the then lawfully elected government. He was, *inter alia*, the secretary-general of the South African Council of Churches and the vice president of the United Democratic Front. It was the stated policy of the latter organisation to propagate and support countrywide unrest and violence for the direct purpose of rendering the country ungovernable.
29. During April / May 1989, Reverend Chikane was planning to visit various foreign countries with a view to propagating the imposition of economic sanctions against South Africa.
30. The first leg of his trip was a visit to South West Africa, now Namibia. He travelled by air from the former Jan Smuts Airport to Windhoek.
31. After dressing on 24 April 1989 in some of the clothes that had been packed in his suitcase, the Reverend Chikane took ill. He was admitted to a hospital in Namibia, but later the same day, he was transported back to South Africa as a matter of urgency and re-hospitalised on arrival.
32. His condition improved and he was discharged from hospital. He then flew to the USA, both to recuperate and to keep a number of scheduled appointments. Additional clothing was packed in his suitcase, which had arrived from Namibia in the interim.

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33. In the United States, Reverend Chikane again fell ill after wearing clothing taken from his suitcase. Again, after being hospitalised, his condition improved. This pattern was repeated twice more.
34. During his third hospitalisation in the USA, extensive medical tests were carried out on Reverend Chikane. P-Nitrophenol was found in his urine and this, together with specific symptoms and other test results, indicated organophosphate poisoning. P-Nitrophenol is a rapidly biodegradable metabolite of Parathion, of which Paraoxon is the active ingredient.

(iv) THE CRIME:

35. During the 1980s, various individuals / organisations were actively involved in efforts to abolish apartheid in South Africa and/or overthrow the government of the day by violent means. Methods used included the promotion of economic sanctions against and the international isolation of South Africa, as well as direct propagation of civil disobedience in order to render the country ungovernable.
36. During 1987, at a meeting arranged by the South African Defence Force, accused No 1 took cognisance of an order to act against high profile members of the anti-apartheid liberation struggle in order to neutralise their influence. He also took note that, in extreme cases and only as a last resort, consideration could be given to killing them.
37. A list containing the names of persons identified in terms of this order was handed to senior members of the security establishment, including accused No 1. Reverend Chikane's name was among those on this list.
38. The execution of the above-mentioned order was discussed by accused No 1 and No 2.
39. Accused No 1 and No 2 then decided that a special unit should be set up within the Security Branch for the purpose of carrying out this order.
40. Accused No 4 and No 5 were attached to this special unit at all relevant times and from January 1989, accused No 3 served as the commander of the unit.
41. After General Smit assumed command of the Security Branch, he was informed about the objectives of the special unit.
42. Acting on the orders of General Smit, accused No 3 made contact with Dr Basson and requested him to assist the special unit in acquiring substances that could be applied against the enemy. Dr Basson arranged for contact to be made with Dr Immelman.

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43. A number of clandestine meetings took place thereafter between Dr Immelman and accused No 3, 4 and 5. At these meetings, these three accused discussed the details of substances that could be used against the enemy. In respect of Reverend Chikane, a substance that would specifically lead to his death was required. Dr Immelman identified a certain substance for this purpose and explained that it should be applied to close-fitting clothing items, such as a shirt collar and/or underpants. The toxic substance, which was subsequently identified as Paraoxon, was supplied to them by Dr Immelman.
44. Paraoxon is a lethal toxic substance.
45. On 4 April 1989, Dr Immelman delivered the Paraoxon to the accused, as reflected in Annexure "A" of the Indictment.
46. Reverend Chikane was due to depart for Windhoek from Jan Smuts Airport on 23 April 1989.
47. On the evening of 23 April 1989, accused No 3 and No 4 were at the airport and Reverend Chikane's suitcase was intercepted. They then applied the Paraoxon supplied to them by Dr Immelman, to the contents of Reverend Chikane's suitcase.
48. The poisoning of Reverend Chikane's clothing resulted in the series of events set out in paragraphs 31-34.
49. The order to kill Reverend Chikane was issued by General Smit to accused No 3 in terms of an order conveyed to accused No 1 and No 2. The accused acted in pursuance of a common purpose to murder Reverend Chikane. At all relevant times, the accused acted unlawfully and with the necessary intent.

AGREEMENT REGARDING A JUST SENTENCE:

J. AGGRAVATING CIRCUMSTANCES:

50. The administration of poison in order to secretly eliminate opponents is an egregious, reprehensible and universally abhorrent act.
51. Accused No 1 was the Deputy Chief of the Republic of South Africa's Police at the time of commission of this crime.
52. Accused No 2 was a prominent political leader and member of the ruling party of the day.
53. Reverend Chikane was a religious leader.

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54. The motive for the planned murder of Reverend Chikane was to prevent him from lobbying abroad for economic sanctions against South Africa and to deprive him of his role in promoting internal resistance against the government..
55. The **Promotion of National Unity and Reconciliation Act, No 34 of 1995**, made provision for persons who were guilty of committing gross human rights violations for political purposes, to apply for amnesty
56. On several occasions, accused No 1 and 2 availed themselves of this right and testified before the Truth and Reconciliation Committee, each time under oath
57. The accused did not apply for amnesty in respect of the charge to which they have now pleaded guilty.
58. On 10 July 1997, accused No 1 testified before the TRC that he was not aware of the existence of a so-called "internal hit list" that was circulated within the security community.
59. Acts of reconciliation towards Reverend Chikane by accused No 2 took place only after the National Prosecuting Authority had indicated that it had a *prima facie* case against accused No 3, 4 and 5 in respect of the poisoning of Reverend Chikane.
60. During the trial of Dr Wouter Basson, who was charged, *inter alia*, with the poisoning of Reverend Chikane, the accused, and in particular accused No 2, remained silent about their role in the attempted murder and avoided any suggestion of attempted reconciliation.
61. During the prosecution of Dr Basson, accused No 3, 4 and 5 were approached on several occasions by members of the prosecution team with a view to giving evidence as State witnesses. They were offered indemnity from prosecution in terms of Section 204 of Act 51 of 1977 in this regard. The accused consistently refused to offer their cooperation and persisted in furnishing the State with a false version of events. The accused offered instead to cooperate with Dr Basson's legal defence team.
62. After conclusion of Dr Basson's trial, Reverend Chikane wrote to accused No 3, 4 and 5 several times, pleading with them to reconcile with him. The accused consistently ignored all his requests.

K. MITIGATING CIRCUMSTANCES:

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63. None of the accused has any previous convictions. Their respective ages are 71 (accused No 1), 70 (accused No 2), 69 (accused No 3), 60 (accused No 4) and 63 (accused No 5).
64. The accused are all married.
65. The accused have all pleaded guilty.
66. Disposal of this case in terms of Section 105A of Act 51 of 1977 saves both the court and the State the cost and inconvenience of a protracted trial.
67. The accused have assisted the State by pleading guilty, in so far as it would otherwise have been difficult for the State to prove its case, since the State is not in possession of any evidence regarding the involvement of accused No 1 and No 2 and has been able to establish their role only as the result of their cooperation. In addition, accused No 3 and No 4 came forward to disclose their roles.
68. The accused have shown remorse for their deeds and have undertaken to act as State witnesses in the event of a prosecution being instituted against General Sebastiaan Smit.
69. Accused No 2 publicly washed Reverend Chikane's feet as a gesture of reconciliation. This act of contrition must be seen against the background that it was performed voluntarily by accused No 2.
70. The sincere remorse of accused No 2 in regard to past deeds is further illustrated by his act of reconciliation towards the mothers of 9 of the 10 Nietverdiend victims killed by the Security Forces, despite the fact that accused No 2 had no knowledge of this operation at the time and nor was it sanctioned by him.
71. At all relevant times, the accused were acting by virtue of their official positions and posts, in defence of the lawfully elected government of the day, to which they had sworn an oath of allegiance.
72. The offence was committed during a period of intense conflict and division between the various communities and structures in South Africa. On the one hand, the ANC and other anti-apartheid organisations that wished to overthrow the government by violent means, had thrown everything into the struggle to achieve their objectives. All members and spheres of society were drawn into the struggle in order to foment resistance in a variety of forms. On the other hand, the then lawfully elected government, in turn, used all the methods and powers at its disposal. The Security Forces, and in particular the SA Police, played a key role in combating the onslaught. Amid the violence raging countrywide as well as in Namibia, the SA Police were increasingly required to act against trained military organisations which had a significant influence on internal politics. At times,

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they were forced to sacrifice the principle of minimum force and, amid the violence and bloodletting, the distinction between lawful and unlawful action became blurred.

73. At the time of commission of the offence outlined in Count 1, accused No 1 was no longer head of the Security Police and was also no longer involved in the project
74. Neither accused No 1 nor No 2 had knowledge of the specific attempt on Reverend Chikane's life. Notwithstanding the fact that accused No 2 had made it clear that he wished to be informed in advance if consideration was being given to killing a specific individual, he was not informed in this particular case.
75. Accused No 3 and No 4 were subordinates who acted in terms of a direct order issued by the Security Branch chief, General Smit.
76. The original project aimed at neutralising the influence of high profile members of the anti-apartheid liberation struggle, was not initiated by the accused, but by the SA Defence Force, which itself was acting on higher authority
77. As secretary-general of the South African Council of Churches and vice president of the United Democratic Front, Reverend Chikane played a key role in fomenting resistance to the former government. The United Democratic Front succeeded in mobilising the masses countrywide, resulting in widespread unrest and violence
78. In the run-up to the TRC process, accused No 1 did everything possible to encourage members and former members of the SA Police to participate in the process. When the incident involving Reverend Chikane came to his notice, he held discussions with former chiefs and generals of the SA Defence Force in an attempt to persuade them to take part in the process as well. Because members of the defence force were involved in the incident, any attempt to seek amnesty would necessarily have been unsuccessful without their cooperation. The military generals were of the opinion, however, that the **Promotion of National Unity and Reconciliation Act, No 34 of 1995**, contained one-sided provisions that rendered the process unacceptable to them
79. After conclusion of the TRC process, accused No 1 and No 2 did everything they could to promote creation of a further process that could address shortcomings exposed by the TRC process. Following the decision to prosecute accused No 3, 4 and 5, accused No 1 and No 2 also held discussions with Reverend Chikane with a view to the institution of such a process. He showed empathy for the problems with which accused No 1 and No 2 were wrestling

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80. With the formulation of the National Prosecuting Authority's prosecutorial guidelines entitled "*Prosecuting policy and directives relating to the prosecution of offences emanating from conflicts of the past and which were committed on or before 11 May 1994*" (see Annexure "B"), a process was created that offered built-in protection for individuals who wished to make use of it, and the accused lost no time in coming forward and making full disclosure regarding this incident, which they had not been able to do in response to the letters from Reverend Chikane referred to in paragraph 62 above.

L. SENTENCE AGREEMENT:

81. In the light of the circumstances set out above, agreement has been reached on the following as appropriate sentences in respect of count 1:

Accused No 1 and No 2:

Each of the accused is sentenced as follows:

"10 (ten) years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

Accused No 3, 4 and 5:

Each accused is sentenced as follows:

"5 (five) years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

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SIGNED AT PRETORIA ON THIS DAY OF JUNE 2007.

AR ACKERMANN SC
Director of Public Prosecutions
Priority Crime Litigation Unit.

1. JOHANNES VELDE VAN DER MERWE

2. ADRIAAN JOHANNES VLOK

3. CHRISTOFFEL LODEWIKUS SMITH

4 GERT JACOBUS LOUIS HOSEA OTTO

5. HERMANUS JOHANNES VAN STADEN

JAN WAGENER
ATTORNEY FOR THE ACCUSED
WAGENER MULLER
833 CHURCH STREET
ARCADIA, PRETORIA
TEL: (012) 342-3525
DOCEX 321 PRETORIA

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Theatre Of Differences Outside Vlok Trial



Staff Reporter • 16 AUG 2007, 17:45 • 3 min read

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Civil society groups from opposite sides of the political fence are to highlight their views on the Vlok trial at the Pretoria High Court on Friday.

The Khulumani Support Group will be outside the court as part of its proceedings to hand over a charter of redress.

The 33,000-member support group runs various programmes, including post-Truth and Reconciliation Commission (TRC) lobbying and advocacy for the rights of apartheid victims.



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On Friday apartheid-era minister of law and order Adriaan Vlok, former police chief Johan van der Merwe and three other former high-ranking police officials will appear in the Pretoria High Court in connection with the attempted poisoning of then anti-apartheid activist Frank Chikane.

Khulumani said in a statement on Thursday that the charter it would be handing over to a Department of Justice and Constitutional Development official would provide a checklist of what victims and survivors of apartheid need in order to experience justice and inclusion in South African society.

“The charter identifies the fact that reconciliation has a price — the price is the cost of redressing the terrible wrongs done to individuals and communities across South Africa,” said the support group.

Khulumani said the guidelines under which Vlok, Van der Merwe and others were to be prosecuted were too lenient.

“These amendments create new and less rigorous amnesty opportunities for apartheid criminals who either failed in their original applications to the TRC or avoided altogether engaging with the TRC,” said Khulumani.

“While new opportunities are created for apartheid criminals to once again seek indemnity from prosecution, no benefits or opportunities

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have been extended to victims and survivors of apartheid atrocities to address their urgent needs.”

Meanwhile, AfriForum will hold a peaceful demonstration and a flower-laying ceremony in memory of ”victims of African National Congress [ANC] terror attacks” and ”other victims of gross human rights violations” outside the court on Friday morning, the organisation announced on Thursday.

”AfriForum will protest in order to demand that ANC leaders will also be prosecuted for atrocities and gross violations of human rights committed by the ANC during the 1980s.”

AfriForum CEO Kellie Kiel said in a statement that the National Prosecuting Authority had to note the Tice’s finding that the ANC leaders could be held responsible for the ”gross violation of human rights” during landmine attacks as well as ”other acts of terror”.

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”If the National Prosecuting Authority persists in treating the ANC’s leaders differently from other offenders, any future prosecutions will

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amount to selective morality and a witch-hunt,” he said.

‘Beefed up’

The eagerly awaited court appearance of the apartheid-era security bosses might yield little drama.

It is widely speculated that the men might have entered into a plea bargain with the state. If so, they would only appear in the Pretoria High Court for a few minutes.

Should the case not be settled by a plea-bargain, it would continue for only a few minutes longer, as the indictment would be read out, the men asked to plead, and Judge Eben Jordaan would then postpone it for trial.

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This does not prevent it from being the proverbial hottest ticket in town.

Earlier in the week the National Prosecuting Authority urged reporters covering the trial to arrive early as there would be no special arrangements for the media.

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The National Prosecuting Authority also had bad news for the multitude of foreign news organisations wanting to cover the trial — it would be conducted in Afrikaans.

Police spokesperson Director Phuti Setati said the police would “beef up” security at the court.

“We are not expecting any problems but we must be prepared,”
he said. — Sapa

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Reject NPA's Prosecution Guidelines



Staff Reporter

• 27 AUG 2007, 03:00 • 2 min read

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Suspended sentences for apartheid criminals Adriaan Vlok and his co-accused are just not good enough. But then neither was the decision of the National Prosecuting Authority (NPA) to select a privileged “good” and understanding survivor in the form of Rev Frank Chikane as the test case for the NPA’s prosecutions policy, amended without public debate in 2005.

This policy creates a “back-door amnesty” (virtually a back-door indemnity) for apartheid criminals without full disclosure and without any of the safeguards contained in the Truth and Reconciliation Commission (TRC). It strikes at the very heart of an increasingly fragile



of an increasingly fragile reconciliation, perpetuates a culture of impunity and destroys the remaining credibility of the TRC process.

New

The Khulumani Support Group rejects the inappropriate sentencing of Vlok and his co-accused. The second more serious charge of conspiracy to widespread murder was dropped as part of the plea bargain.

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The actual sentence probably matters little to Rev Chikane, comfortably ensconced in the Presidency. Compared to many thousands of less privileged, non-high-profile victims and survivors of apartheid crimes, who live daily with the consequences of torture, murder of loved ones, unresolved disappearances of family members and wounding from attempted assassination, it is perhaps easier for Chikane to forgive his would-be assassins.

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The statement by Vlok and his co-accused following their sentencing that the solution to solving apartheid crimes is “appallingly uncomplicated”, is appallingly callous.

Khulumani and others have lodged a legal challenge to the amended prosecutions guidelines that the government is opposing. The Vlok case

opposing. The Vlok case went ahead in spite of this. It is time the direct and indirect victims and survivors of apartheid crimes, and apartheid-related socioeconomic neglect, were reincorporated into the reconciliation agenda of South Africa.

New Another artificial demarcation has been created.

Arts & Culture

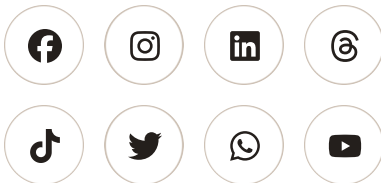
Perpetrators of apartheid crimes should make appropriate redress to victims and their families. Meaningless suspended sentences serve no purpose in advancing substantive reconciliation for all South Africans. Justice should not only be done, but seen to be done. A culture of impunity can only be reversed when those who shunned the generous TRC process are charged using the “bold prosecution policy” recommended by the TRC. The parallel rehabilitation of and redress to victims and survivors is essential.

Marjorie Jobson is acting director and Tshepo Madlingozi advocacy coordinator of the Khulumani Support Group

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NPA role in Vlok matter offers a lesson for our country

Comments



*Fears of retribution in trial proved to be without foundation, says **Frank Chikane**.*

THE decision by the National Prosecuting Authority (NPA) to prosecute Adriaan Vlok, Johan van der Merwe and others triggered robust debate.

Although it was clouded by the much-publicised issues concerning me and Vlok, it was about how our country deals with the unfinished business of the Truth and Reconciliation Commission (TRC).

Given the nature of the issue, it was not surprising that people responded to the debate in an emotional way. Perhaps they were not fully aware of the prescribed post-TRC processes. Questions were raised about whether this was a witch-hunt by the ANC and/or government against Afrikaners? Others wondered why we didn't send the perpetrators of apartheid who did not get amnesty to prison. Some wanted to know why we didn't forget the past and move on.

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I emphasised the importance of a healthy and informed debate on all matters affecting our society, including those pertaining to the post-TRC era. Our democracy could not have been achieved in the absence of dialogue and robust engagement.

I appealed to opinion-makers to focus on the fact that the TRC was the result of a collective resolve by South Africans that the nation needed to talk, tell the truth, reconcile and strengthen its efforts in building a united post-apartheid society. I called for caution so that we would not undermine the spirit of nation-building in which the TRC hearings were carried out.

This brings me to why I welcomed the court's decision to accept the plea-bargain agreement between Adriaan Vlok, Van der Merwe and others and the NPA. I have always said I have no interest in sending anyone to jail for the political crimes of the past. Like others, I needed full disclosure.

Relating to my poisoning, I now know how decisions were made at the highest level to use execrable and extra-judicial means to eliminate some of us considered to be a thorn in the flesh. I also know how the operation was carried out, the chain of command and the people involved. I have a full picture of what happened and my family are left with no questions. The chapter is closed and I am pleased that a legal resolution was found.



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That I have forgiven Vlok and others is well known. However, the court case was separately important. The information that surfaced in court two days ago serves a bigger purpose and takes our national quest to come to terms with our past to a higher level.

I am particularly pleased that Vlok and Van der Merwe approached the NPA on their own to provide information regarding what they knew about the case. This was an extraordinarily bold step they took, being aware of the possibility of serving a jail sentence, a fact which Vlok publicly stated when he visited me.

Undoubtedly, I would not have completely healed had they not taken this step. Likewise, I am certain Vlok would not have had peace of mind if he did not have the conviction to come clean. We both enter the future with determination never to allow the past to spoil the future.

Yet I believe the Vlok trial is of national importance for reasons other than my personal interests.

The outcome of the court process gives practical expression to the spirit of the 2005 NPA guidelines that regulate the handling of outstanding TRC-related matters.

A day before the court pronouncement, some people were still speculating that Vlok could be jailed. One hopes they, but most importantly, our Afrikaner brethren who may have been wrongly led to suspect that the NPA – through its guidelines – was an instrument to get some of them behind bars. An example was set on Friday. A great deal of uncertainty has been removed and legal certainty has been given to Vlok and his colleagues. That the new South Africa is a constitutional state has been demonstrated once again.

I want to believe that all perpetrators and victims during apartheid will follow this route. There is an opportunity for those who may find themselves in a similar situation. Now that a precedent has been set, one can only hope others will demonstrate Vlok's courage of conscience.

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Also significant is the outcome of the court in reaffirming the importance of dealing with TRC-related matters within the confines of the law.

Hopefully, the outcome of the court will serve to renew our collective trust in the integrity of our legal system, particularly in its proven capacity to handle sensitive and complicated political matters in an unbiased manner.

The evidence that NPA guidelines can facilitate a win-win outcome is there for all to see. One can only hope that the wisdom of working within the law is recognised widely.

The uniqueness of our jurisprudence – however imperfect – to deal with conflicts of the past is a marvel for most of the world. I suspect the manner in which we handled the case related to Vlok and others will have important lessons inside and outside our country.

This, I hope, will further serve correctly to project ours as a country of people who have demonstrated that it is possible to make the law advance national unity and reconciliation.

- Chikane is director-general in the Presidency and secretary of cabinet. He writes in his personal capacity.

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NEWS POLITICS

'Vlok deal undid what the TRC tried to do'

Quinton Mtyala | Published 18 years ago



Ask AI



1min

Former Truth and Reconciliation Commission (TRC) deputy head Alex Boraine has denounced the plea-bargain deal that kept apartheid police minister Adriaan Vlok from jail as having undone everything the TRC had tried to do.

He spoke last night at the Centre for the Book at a panel discussion on Dilemmas of Prosecuting Apartheid Perpetrators hosted by the Centre for Conflict Resolution. Fellow commissioner Mary Burton also spoke.

Vlok, ex-police chief Johan van der Merwe, former major-general Christoffel Smith and former colonels Gert Otto and Johannes van Staden pleaded guilty to the attempted murder of Frank Chikane in 1989.

All four received 10-year suspended sentences.

"We now need to explore ways in which the process can be legitimate, because the fact that Vlok and Van der Merwe can escape with suspended sentences is not fair."

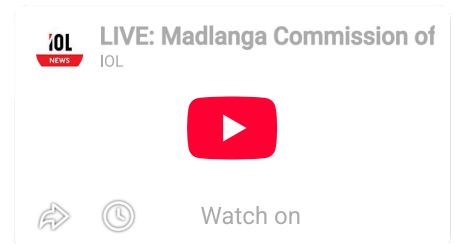
He said the Department of Justice had delayed in acting on recommendations made to it by the TRC on possible prosecutions of those who had not applied for amnesty.

"Van der Merwe lied when he appeared before the TRC when he denied there was list of names (of anti-apartheid activists to be killed), because he later admitted in his trial with Vlok to the existence of the list," said Boraine.

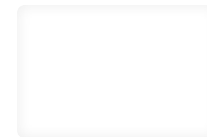
He said the "conciliatory" gesture by Vlok in which he washed the feet of Chikane had not been genuine.

quinton.mtyala@inl.co.za

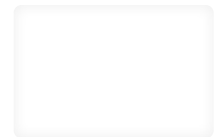
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T Mbeki: Joint Sitting of Parliament to Report on Processing of Presidential Pardons

21 Nov 2007

Address by President of South Africa, Thabo Mbeki to the Joint Sitting of Parliament to Report on the Processing of some Presidential Pardons

Cape Town

21 November 2007

Madam Speaker and Deputy Speaker of the National Assembly
Chairperson and Deputy Chairperson of the National Council of Provinces
Leaders of our political parties
Honourable Ministers, Deputy Ministers and Premiers
Honourable members
Distinguished guests
Ladies and gentlemen

I would like to thank the presiding officers of both Houses of Parliament for acceding to my request to make this short address to this joint sitting so as to make a particular announcement that I hope will contribute to our continuing efforts towards national reconciliation and nation building.

It is indeed an indication of the deep scars inflicted by our painful past that thirteen years after the attainment of our freedom we still have to grapple with matters of persons who committed offences that might be categorised as political, creating the possibility that we can be accused of having political prisoners.

This day, the 21st of November, holds some special and tragic memories for a number of families in our country, especially those of Mamelodi in the Tshwane

Metropolitan City. On this day in 1985, a protest demonstration of thousands of local residents was brutally ended by police bullets and teargas, leaving 13 people dead and many others maimed for life.

We would like to assure the families who were so tragically affected that as they remember their loved ones, the government and people of South Africa stand together with them. Our abiding prayer is that as we engage in various programmes to heal our nation, our efforts will also assuage the pain of those families, throughout our country and region, which lost some of their kith and kin as a result of apartheid repression and aggression.

Yesterday, one of our daily newspapers, the Johannesburg Star, carried a chilling story of how four suspected African National Congress (ANC) guerrillas were abducted in July 1987 by the then Northern Transvaal Security Branch. The Security Police first took two of these suspects, Andrew Makupe and Jackson Maake to a farm in Pienaars River. After beating them for hours, the apartheid police unit made Makupe to phone his friend, Harold Sefolo, pretending he wanted to see him.

They then picked up Sefolo and finding it difficult to extract information from him, they wired Makupe to a portable generator and electrocuted him in front of Sefolo. They did the same to Maake and told Sefolo that he was also going to be electrocuted. He asked to make a final request and his torturers agreed. He then gave a short speech and sang Nkosi Sikelel' iAfrica. When he finished, he too was electrocuted to death.

The fourth victim, Justice Mbizana, was arrested and taken to a farm in Hammanskraal where he was tortured and bludgeoned to death. The police then tried to destroy the bodies of the deceased with explosives, to ensure that the stories, the fate and identity of those who had been murdered would never be known.

However, the critical work that the Truth and Reconciliation Commission (TRC) did ensured that the nation got to know what happened to these and many others who died so that we can enjoy the freedom for which we pride ourselves today. Further, the sterling work of the Missing Persons Task Team of the National Prosecuting Authority found the remains of the patriots featured in the story in the Star in a grave in Winterveldt outside Tshwane and through Deoxyribonucleic Acid Analysis (DNA) tests, was able to identify the deceased.

As far as we know, their families and indeed the families of the many who died in similarly horrible circumstances have not asked for vengeance, but have insisted on a process of healing. They have not asked for retribution. Rather they have requested that all of us should sustain the memory of the heroes and heroines in everything we do.

Accordingly, when we speak of our continuing efforts towards national reconciliation and nation building, and when we take additional steps in this direction, as we are doing today, we do so with the memory of all these martyrs fresh in our minds.

Honourable members,

Conscious of the horrors that were done to perpetuate white minority rule, many have hailed South Africa's relatively smooth and peaceful transition as one of the most outstanding achievements among modern political transitions.

While our freedom and democracy represent the most profound and indestructible reparation for all the people of South Africa, we recognised that individuals and communities affected by specific acts of gross human rights violations deserved and deserve specific attention.

We also all agreed that those who perpetrated acts of gross human rights violation needed to come clean, to admit to their actions and apologise to those who had been harmed. We also recognised that some of the acts perpetrated by certain individuals were politically motivated and thus needed to be taken into consideration by the Truth and Reconciliation Commission's amnesty process.

The Post-amble of South Africa's Interim Constitution placed emphasis on reconciliation and the reconstruction of a post-conflict South African society.

It said: "In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date which shall be a date after 8 October 1990 and before 6 December 1993 providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed".

This Post-amble set the stage for the adoption of the Promotion of National Unity and Reconciliation Act, (TRC Act) 1995. Among other things, the TRC Act created the political and moral climate for the consolidation of our democracy and fostering a culture of human rights.

It provided for the establishment of the Truth and Reconciliation Commission (TRC), with the specific purpose of promoting national unity, reconciliation and healing, in a spirit of forgiveness, compassion and understanding.

Undoubtedly, the TRC was an important process which, while confronting our ugly past, sought to help us to advance beyond the very conflicts and divisions that had brought pain and suffering among many of our compatriots.

The final act of the Commission as it concluded its important work was to make recommendations to the President in respect of reparations to the victims of gross human rights violations.

Honourable members,

The drafters of the Interim Constitution also saw amnesty as an essential element of the quest to advance reconciliation and national unity. The amnesty process of the TRC was therefore a massive undertaking in terms of building bridges across the great divides caused by racial conflict and repression.

The cut-off date, relating to offences that could be considered by the TRC's Amnesty Committee, was initially set by the Post-amble of our Interim Constitution to be before the 6th of December 1993.

However, following requests from various political formations, especially those organisations whose members were incarcerated for offences committed just before the 1994 elections, and because of our relentless pursuit of the objective of national reconciliation, we all agreed to an extension of the cut-off date to 10 May 1994, the day of the inauguration of the new, democratically-elected President of the Republic.

While this new date served to accommodate the concerns of various individuals, members and supporters of various political organisations and thus further promoted national reconciliation in the run-up to our country's first ever democratic elections in 1994, this date did not take into consideration that political violence in this country, especially in certain areas such as KwaZulu-Natal, persisted well beyond that cut-off date.

Therefore, once the TRC had finished its business, we still had a number of issues, such as the question of amnesty for many South Africans who had not participated in the TRC process for a number of reasons, which had to be finalised. It thus became clear that the so-called "unfinished business" of the TRC would have to be finished in one way or another.

When I was privileged to address a Joint Sitting such as this one, on 15 April 2003, tabling the Final Report of the Truth and Reconciliation Committee, I referred to one element of this "unfinished business". I said:

"Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases: and this was not to be."

This reality cannot be avoided. Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations.

We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing.

However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.

To facilitate this process, the authorised Ministerial Committee has since this statement was made, developed the required guidelines to assist the National Directorate of Public Prosecutions to do its work.

This means that those who committed offences of the kind that was considered by the TRC Amnesty Committee, who did not apply for amnesty and have not been convicted for any offences they may have committed, are free to approach the National Director of Public Prosecutions and engage in the processes we have described.

Honourable members,

For some time since the year 2000, government has been seized of the challenge to bring to a close the vexing matter of those prisoners serving sentences for what might be considered to be politically motivated crimes of the kind that fell within the brief of the Amnesty Committee of the TRC. In dealing with the challenges I have outlined, we have had to proceed with care, sensitive to the legacy of the TRC.

With regard to these matters, it is important that our actions do not, in any way, undermine or suggest that any attempt is being made to undermine the TRC process and its outcomes.

From as early as the year 2000, after the mechanisms put in place by the TRC Act had fulfilled their statutory mandates, we have with ever-increasing regularity received requests for pardon from various political parties, organisations and individuals, in respect of individuals who have been sentenced by our courts for serious offences, both before and after the 10 May 1994 TRC cut-off date, allegedly in furtherance of political objectives or aims, arising out of conflicts of the past.

Currently, government is in possession of at least 1062 applications for presidential pardons by people who have been found guilty of offences which were allegedly committed with a political motive, arising from the conflicts of the past.

Honourable members,

In the last few years, both prior to the commencement of the new constitutional dispensation and thereafter, amnesty and indemnity laws were enacted and utilised to extinguish criminal (and in some instances civil) liability, and/or expunge criminal convictions and criminal records of persons who committed offences with a political objective, during the conflicts of the past.

The lifespan of all these pieces of legislation, namely the Indemnity Act (Act 35 of 1990), the Further Indemnity Act (Act 15 of 1992) and the last being the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995)(the TRC Act), have expired and can no longer be utilised.

We have also considered other statutory provisions, such as Section 82 and other measures in the Correctional Services Act, 1998 (Act 111 of 1998), and those in the Criminal Procedure Act, 1977 (Act 51 of 1977). I have not found any of the existing measures suitable to deal with the specific matters at hand, to which I have referred, in a flexible, decisive and speedy manner.

As a way forward and in the interest of nation-building, national reconciliation and the further enhancement of national cohesion, and in order to make a further break with matters which arise from the conflicts of the past, consideration has therefore been given to the use of the Presidential pardon to deal with this "unfinished business."

As the honourable members know, our Constitution says that the President is responsible for "pardoning or relieving offenders and remitting any fines, penalties or forfeitures." (Article 84(2) (j).)

The Honourable members will also remember the 1997 ruling of the Constitutional Court in the matter of the President of the Republic of South Africa v Hugo. The Court said:

"Pardoning a sentenced person is not a private act of grace in the sense that the pardoning power in a monarchy may be. It is recognition in the Interim Constitution that a power should be granted to the President to determine when, in his view; the public welfare will be better served by granting a remission of sentence or some other form of pardon."

The Constitutional Court also said, "No prisoner has a right to be pardoned, to be reprieved or to have a sentence remitted. The Interim Constitution places such matters within the power of the President."

I believe that the sum total of all this is that the President has an obligation to consider all requests made to him or her to pardon or reprieve offenders and remit any fines, penalties or forfeitures.

At the same time, having thus applied his or her mind, the President is under no obligation to accede to the requests made to him or her, provided that she or he proceeds in a rational manner.

I requested the convening of this Joint Sitting to inform the honourable members of Parliament that, considering what the nation sought to achieve through the TRC process, I have decided to institute a special process to assist me as I discharge my constitutional obligation to consider the requests for pardon from people who have already been convicted for offences they claim belong among the category of offences that were considered by the TRC Amnesty Committee.

This process will cover the requests for pardon of those people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC.

Further to entrench the practice the nation has sought to cultivate, of acting in unity as it addresses the crimes of the past, I would like the political parties represented in our Parliament to assist me properly to discharge my constitutional responsibility to consider the requests made to the President to pardon those who have been convicted in the context of the circumstances I have mentioned.

I therefore take this opportunity to request the political parties represented in this Parliament each to appoint a representative who would serve on a Reference Group that would consider each of the requests for pardon which the President would refer to the group, and then make its considered recommendations to the President.

Needless to say, this will not in any way subtract from the obligation placed by the Constitution on the President, and described by the Constitutional Court, for the President to grant pardons, etc. In other words, the constitutional task to grant pardons and so on will remain with the President.

However, the President would seriously take into account the recommendations made by the Reference Group, respecting the effort the nation has made to unite behind the objective of responding to the conflicts of the past, in the interest of promoting the critical objectives of national reconciliation and nation-building.

The process we are proposing will be of limited duration. It will have to be strictly managed in terms of the mechanisms and procedures which are to be put in place to ensure that the requests for pardon for the category of persons we

have mentioned are dealt with in an open and transparent manner, uniformly and in strict compliance with predetermined procedures and criteria.

In this regard, among other things, we will have to act in a manner that respects the observation made in 1996 by the Constitutional Court in the matter of The Azanian People's Organisation (AZAPO) et al versus The President of the Republic of South Africa et al. I refer here to the following determination made by the Court:

"The amnesty contemplated is not a blanket amnesty against criminal prosecution for all and sundry, granted automatically as a uniform act of compulsory statutory amnesia. It is specifically authorised for the purpose of effecting a constructive transition towards a democratic order. It is only available where there is a full disclosure of all facts to the Amnesty Committee and where it is clear that the particular transgression was perpetrated during the prescribed period and with a political objective committed in the course of the conflicts of the past. That objective has to be evaluated having regard to the careful criteria listed in Section 20(3) of the Act, including the very important relationship which the act perpetrated bears in proportion to the object pursued."

Honourable members,

During a three-month "window of opportunity", covering the period 15 January to 15 April 2008, persons who were convicted for offences they believe were of the nature of the offences considered by the TRC during the period up to 16 June 1999, will have the opportunity to apply for a Presidential pardon in the prescribed manner, if they have not already done so.

Applicants who were convicted for involvement in any offence of a sexual nature, or any act of a domestic violence nature, or any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992, which relates to the manufacture and supply of scheduled substances, the use and possession of drugs and dealing in drugs, will not qualify for consideration.

In order to ensure that we do not undermine the work of the TRC, applicants who had applied to the Amnesty Committee established under the TRC Act and whose application for amnesty was refused, will not be considered for this Presidential pardon process.

The President will make his decision whether to refuse or grant pardon on each application placed before him, on an individual basis.

Further, the President will, with regard to each application placed before him:

- * seriously consider the recommendations made to him by the Reference Group;
 - * form an independent opinion on the basis of the facts/information placed before him, to arrive at a decision whether to grant or refuse pardon;
 - and,
 - * in so doing, the President:
-
- * will be guided by the principles and values which underpin the Constitution, including the principles and objectives of nation-building and national reconciliation; and,
 - * uphold and be guided by the principles, criteria and spirit that inspired and underpinned the process of the Truth and Reconciliation Commission, especially as they relate to the amnesty process.

The Presidency and the Department of Justice and Constitutional Development will announce further details about this process.

These will include a description of the support mechanisms we will need to support the Reference Group, specific Terms of Reference for this Group, and the time frames for the completion of its work, which, obviously, will in part be determined by the number of applications for pardon that would be received during the "window of opportunity" we have mentioned.

I trust that all the political parties represented in our Parliament will respond positively to our invitation and request to them to appoint a representative to serve on the Reference Group. Such representatives need not be members of Parliament. And naturally, there is also no obligation on any political party to agree to be represented on the Reference Group.

Perhaps only as a matter of detail, I request that those parties ready and willing to serve in the Reference Group should communicate the names and details of their nominees to the Director General in the Presidency, the Rev Frank Chikane, by 10 December 2007.

This will enable us to constitute the Reference Group without unnecessary delay and give us the possibility to consult it about all relevant matters, prior to the opening of the "window of opportunity" on 15 January 2008.

As I said earlier, all of us have a responsibility to help our country to advance further away from the conflicts of the past, to work together for a shared future that is free of violence, free of bitterness, free of prejudice, free of the albatross of the past – a future of harmony, of respect for the Constitution and the law, of peace and prosperity for all our citizens.

When I had the privilege to address the 15 April 2003 Joint Sitting of our Houses of Parliament to which I have referred, I said:

"In the larger sense, we were all victims of the system of apartheid, both black and white. Some among us suffered because of oppression, exploitation, repression and exclusion. Others among us suffered because we were imprisoned behind prison walls of fear, paralysed by inhuman beliefs in our racial superiority, and called upon to despise and abuse other human beings. Those who do such things cannot but diminish their own humanity".

To be true to ourselves as human beings, demands that we act together to overcome the legacy of this common and terrible past. It demands that we do indeed enter into a people's contract for a better tomorrow.

Together we must confront the challenge of steering through a complex transition that demands that we manage the historical fault-lines, without papering over the cracks, moved by a new and common patriotism.

It says to all of us that we must honour those who shed their blood so that we can sit together in this chamber by doing all the things that will make it possible for us to say, this South Africa that we have rebuilt together, truly belongs to all who live in it.

Once more, let me express my sincere thanks to you, the elected representatives of our people, for convening in this Joint Sitting of the Houses of Parliament to enable the President of the Republic communicate to you, honourable members, the decisions I have taken to deal with a matter that is of great concern to all of us as South Africans, who, I trust, are indeed moved by a new and common patriotism.

Once again, as the late Nkosi Albert Luthuli, Africa's first Nobel Peace Prize laureate once said in different circumstances, we continue to knock at the door of all our compatriots, humbly requesting that we act in concert to pursue what must clearly be a shared and noble goal.

Finally, let me wish all the honourable members and our guests a peaceful and Merry Christmas and Happy New Year, as well as a well-deserved rest during the period between the adjournment of Parliament this week, and the opening of its next session early in 2008.

I thank you for your attention.

Issued by: The Presidency

21 November 2007

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APPLICATION FORM

**SPECIAL DISPENSATION FOR PRESIDENTIAL PARDON IN RESPECT OF
OFFENCE(S) ALLEGED TO HAVE BEEN COMMITTED TO ACHIEVE A
POLITICAL OBJECTIVE**

ALL ENQUIRIES MUST BE DIRECTED TO :

MR N. GAWULA

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

TEL : 012-357 8573/8626

FAX : 0866 193 443

MOBILE : 082 466 8969

REF 414/PP/2008

1. PERSONAL AND CONTACT DETAILS**1.1 PERSONAL DETAILS :**

SURNAME : VAN DER MERWE

FULL NAMES (AS THEY APPEAR IN YOUR ID BOOK)

Johannes Velde

1.2 CONTACT DETAILS :

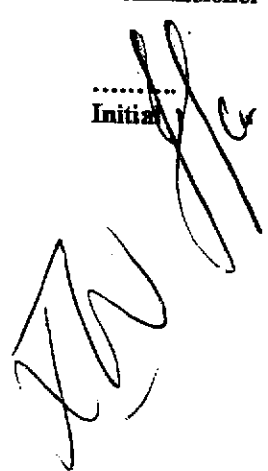
2.

DETAILS OF OFFENCE(S) FOR WHICH PARDON IS SOUGHT

OFFENCE (NAME OF OFFENCE(S)G. MURDER) (List each offence Separately)	DATE OF OFFENCE	PLACE WHERE OFFENCE WAS COMMITTED	DATE OF CONVICTION	COURT CASE NO.
Attempted murder	23 April 1989	Jan Smuts Airport Kempton Park	17 August 2007	High Court Pretoria

This page must be initialed by applicant in the presence of a Justice of the Peace or a Commissioner of Oath

.....
Initial



3.

3. PARTICULARS OF OFFENCE(S) AND MOTIVATION FOR REQUEST

3.1 PROVIDE THE FOLLOWING DETAILS :

3.1.1 How was the offence(s) committed (details of what happened during the commission of the offence(s) :

- 3.1.1.1 During 1987 I attended a meeting at the Command Head office of the South African Defense Force in my capacity of Officer Commanding the Security Branch of the South African Police. The late brigadier Broodryk who was second in command of the Security Branch accompanied me. The meeting took place under the chairmanship of the late General Kat Liebenberg who was then the Chief of the Army, and was also attended by representatives of National Intelligence, Military Intelligence and the Special Forces of the SADF. General Kat Liebenberg indicated that, on the instruction of higher authority, drastic steps had to be taken to curtail the activities of certain political activists and that the full capacity of the state had to be harnessed to this end. The law had to be utilized in every possible way to disrupt and frustrate them. Should this not succeed, but only in extreme cases, consideration could be given to eliminate such activists. A list of names, which I assumed had been compiled by Military Intelligence, was handed out at the meeting. During further discussions it was agreed that each component would pay attention to specified activists. The Security Branch would operate domestically, the Defense Force in neighbouring states and the National Intelligence Service abroad. I can only recall that the names of the Reverend Chikane and Mr. Joe Slovo appeared on the list. From the instruction and ensuing discussion it was clear to me that the intention was that in extreme cases activists on the list were to be killed, and that every component involved should decide on its own how to handle a specific situation.
- 3.1.1.2 I reported back to Mr Adriaan Vlok, who was then the Minister for Law and Order, and handed the list of names to him. Together we decided to establish a unit for the execution of the directive. General Sarel Strydom, at that stage a brigadier, was assigned this task, assisted by colonels Gert Otto and Marie van Staden, who then held the rank of captains. Their activities were of such a nature that they could travel country-wide to link with the various Security Divisions. According to Gen. Strydom he discussed the possibility of the elimination of activists on the list in extreme cases with the commanders of the Security Divisions. He never received any suggestions in this regard from any of the commanders and he also did not make any suggestions of this nature to me or minister Vlok.
- 3.1.1.3 On the 1 October 1988 I was appointed as the Deputy-Commissioner of the South African Police and General Basie Smit thereafter assumed command of the Security Branch of the South African Police. General Strydom felt ill-inclined to continue with the task he was entrusted with and was succeeded by General Chris Smith who then held the rank of colonel. Mr Vlok and myself explained the original concept with which Gen Strydom was charged to General Basie Smit, with the understanding that he would further manage the project. According to my recollection we told Gen Smit that the Reverend Chikane was to be killed. At that stage Reverend Chikane played an important role to destabilize the RSA economically and to further the aims of the ANC to overthrow the government.
- 3.1.1.4 According to General Chris Smith, General Basie Smit summoned him to his office during the early months of 1989 and told him that Chikane was to be "taken out" ('uitgevat or

4.

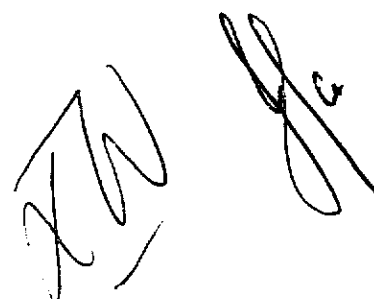
YES - Reverend Frank Chikane suffered organophosphate poisoning as a result of the attempt on his life.

CONTACT DETAILS

Director-General,
Office of the President
Union Buildings,
PRETORIA

3.3 (a) DID YOU BENEFIT PERSONALLY IN ANY WAY BY COMMITTING THE OFFENCE(S)?

NO - in no way whatsoever.

Two handwritten signatures in black ink. The signature on the left is stylized, possibly reading 'XW' or 'XW-'. The signature on the right is more fluid, possibly reading 'Ga' or 'Ga'.

(b) If so, explain the nature and extent of such benefits.

Not applicable

This page must be initialed by applicant in presence of a Justice of the Peace or a Commissioner of Oath



the doj & cd

Department
Justice and Constitutional Development

[Handwritten signature] *[Handwritten signature]*

Initial

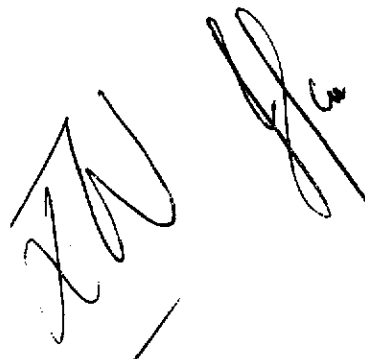
6.

- 3.4(a) WAS THE OFFENCE(S) COMMITTED IN THE EXECUTION OF AN ORDER OF, THE APPROVAL OF, OR AUTHORISED OR IN TERMS OF AN ORGANISATION, BY A POLITICAL PART OR ORGANISATION, INSTITUTION, LIBERATION MOVEMENT OR BODY AND I YES, STATE THE NAME OF THE POLITICAL PARTY, ORGANISATION, INSTITUTION, LIBERATION MOVEMENT OR BODY :**

The offence was committed by me as a member of the South African Police in consultation and with the approval of my political head, Mr Adriaan Vlok, then the minister of law and order, in the circumstances already explained in detail. Although we were not actively engaged in the offence as such and did not authorize the ultimate actions, these actions were the consequence of instructions conveyed by us to the other former members of the Police who were also involved in this incident.

- (b) IF SO, YOU MAY STATE THE PARTICULARS OF SUCH ORDER OR APPROVAL OR POLICY AND THE DATEW THEREOF AND THE NAME(S), ADDRESS(ES), TELEPHONE NUMBER(S) OR ANY OTHER CONTACT DETAILS OF THE PERSON(S) WHO GAVE SUCH AN APPROVAL OR ORDER.**

As already stated in the preceding paragraph, the instructions which eventually lead to the attempt on the life of reverend Chikane, were conveyed to the other former members of the Police by Mr Adriaan Vlok, at that stage the minister of law and order, and myself, although we did not authorize or were even aware at the time when the offence was committed of the ultimate actions in this regard.

Two handwritten signatures in black ink. The signature on the left is more stylized and appears to be 'ZD' or similar. The signature on the right is more cursive and appears to be 'J. van der Merwe' or similar.

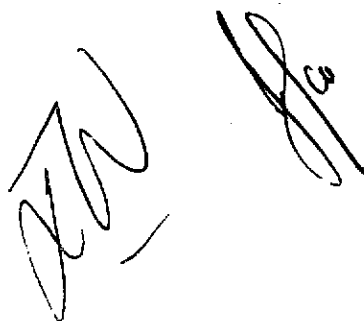
7.

(c) WHAT WERE THE POLITICAL OBJECTIVE, IF ANY, YOU SOUGHT TO ACHIEVE BY COMMITTING THE OFFENCE(S)

Already explained in detail in paragraph 3.1.2 under the heading "WHY WAS THE OFFENCE(S) COMMITTED.

(d) DID YOUR ORGANISATION, INSTITUTION, BODY OR LIBERATION MOVEMENT BENEFIT FROM THE COMMISSION OF THE OFFENCE(S)?

With hindsight I would say it was a futile effort and that it did not disrupt the activities of the ANC/SACP-alliance as envisaged during the planning of the operation.



8.

1) WERE YOU AN OFFICER/OFFICER-BEARER/MEMBER/SUPPORTER OF ANY POLITICAL ORGANISATION/INSTITUTION/BODY/LIBERATION MOVEMENT AT THE TIME THAT THE OFFENCE(S) WAS/WERE COMMITTED. IF SO IN WHAT CAPACITY DID YOU SERVE?

I was the commanding officer of the security branch of the South African Police when in principle the project was approved and held the rank of major-general at that time. I held the rank of lieutenant-general and was the deputy commissioner of the South African Police when the offence was committed.

(b) MEMBERSHIP NUMBER, IF ANY :

Not applicable

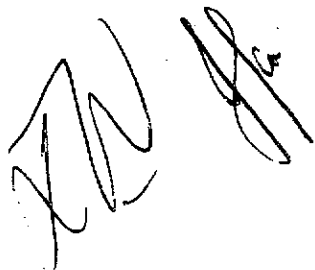
(c) DATE WHEN YOU BECAME A MEMBER OF THE ORGANISATION/INSTITUTION/BODY OR LIBERATION MOVEMENT

I became a member of the South African Police on 3 February 1953 and retired on 31 March 1995.

3.6 STATE REASONS WHY IT WOULD BE IN THE PUBLIC INTEREST IF THE PRESIDENT SHOULD GRANT YOU A PARDON.

3.6.1 I have been actively engaged in the negotiations to establish a new dispensation in South Africa and whilst being commissioner of the South African Police the Police played a major role to ensure that free and fair elections could be held during 1994. At that stage violence was an integrated part of the society in South Africa and it is well known that various organizations were engaged in a violent struggle on the one hand to increase their power base and on the other hand to disrupt the elections. The fact that the South African Police in the face of all these severe threats succeeded to maintain law and order, can only be attributed to their utmost devotion and diligence.

During 1995, after I had already retired and the Truth and Reconciliation Commission had been established, I arranged a meeting in the South African Police College to which I invited all members of the S A Police, especially the security branch members, who were possibly involved in the commission of deeds with a political objective in the past conflict. I explained to the members that after consultation with our lawyer, Mr. Jan Wagener, we had decided to participate in the TRC-process and to ask for amnesty. I and the other generals of the security branch were prepared to accept responsibility for any deed that was executed on our instructions, or in consequence of our instrumentality. On these grounds any member was free and at liberty to request amnesty.



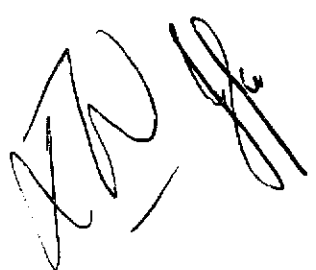
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A while later, general Strydom and colonel Manie Van Staden came to see me and intimated that major-general Chris Smith and colonel Gert Otto were involved in the attempt to poison reverend CHIKANE, and that they were of the opinion that everyone who was involved in the project should ask for amnesty. I agreed, and discussed the matter with Mr. Vlok who also declared himself prepared to ask for amnesty. I thereafter contacted major-general Smith and colonel Otto and requested them to initiate the necessary steps to apply for amnesty. Both Mr. Vlok and I were prepared to expose our involvement. Colonel Otto later informed me that dr Wouter Basson and members of the Defense Force were also involved in the project. He discussed the matter with dr Basson who informed him that the Defense Force had decided that they were not going to get involved in the amnesty process, and that he (Basson) personally had no reason to ask for amnesty.

Thereafter I contacted general Jannie Geldenhuys, who during the period concerned was the chief of the South African Defense Force, and also general Kat Liebenberg, and arranged that generals of the South African Defense Force and generals of the Security Branch engage in discussions regarding the possibility of getting involved in the amnesty-process. General Geldenhuys and the other Defense Force generals were, however, strongly opposed to the idea and maintained the view that the process failed to provide for incidents in which members of the Defense Force could have been involved. Individual members of the Defense Force were at liberty to ask for amnesty, but as generals of the Defense Force they would not support such a process. They would, however, take steps in an endeavour to realize a form of general amnesty.

We were prepared to disclose the truth throughout. As already stated, we were after the commencement of the TRC process and the amnesty trials, prepared to apply for amnesty in this case. However, as is clearly revealed in the plea-agreement, we were only in possession of limited information and as the SA Defense Force emphatically refused to take part in the process, there was no conceivable way in which we were able to reveal all the facts. Consequently, an application for amnesty would not have been successful.

Notwithstanding, continuous attempts were made in search of a solution and after the present prosecution directives were issued by the Department of Justice, we immediately submitted all the facts in compliance with aforementioned directives to the National Prosecuting Authority. Prior to this, Mr Adriaan Vlok, Chris Smith and I voluntarily submitted ourselves to a polygraph test in order to confirm the truth of the information we had disclosed. We also declared ourselves willing to undergo any further polygraph tests that the National Prosecuting Authority may insist upon.



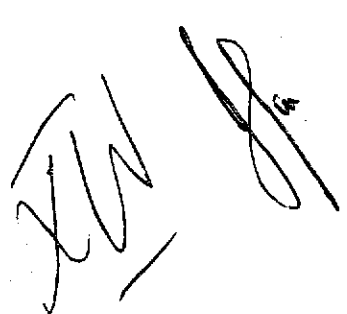
8(contd)

The National Director for Public Prosecutions (Advocate V. Pikoli) however rejected our applications in terms of the directives and determined, notwithstanding the facts that had been revealed, that Chris Smith, Gert Otto and Manie van Staden were to be prosecuted. He also refused to advance any reason why this case could not be finalized in terms of the directives

We also received indemnity in terms of Government Notice Number R936 as published in Government Gazette number 13202 of 24 April 1991, for certain deeds committed with a political objective in the conflict of the past. It includes, amongst others, attempted murder where a dangerous wound was not inflicted. According to legal advice that we received, this indemnity is in all respects applicable in the Reverend Chikane incident and all the legal requirements satisfied. We emphasized to the National Prosecution Authority that we, however, would not like to hide behind this indemnity in an attempt to conceal the attempt on the life of Reverend Chikane. It would however apply in the case of prosecution. The National Prosecuting Authority, however, **also rejected the indemnity notwithstanding the fact that a large number of ANC-members and members of other liberation movements received indemnity in similar circumstances.**

We could have approached the High Court to review the decision of the National Prosecution Authority with regard to the directives and the indemnity. Hard experience, however, taught us that the National Prosecution Authority would probably appeal against any negative ruling of the High Court and would also most probably take the matter to the Constitutional Court as a last resort. The legal costs would have been between one and two million rand, which we simply could not afford.

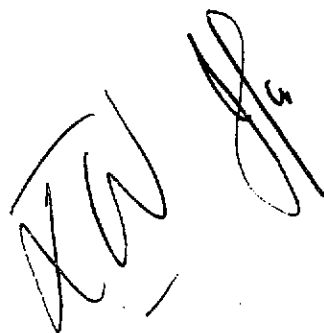
The role that Mr Adriaan Vlok and I played in the attempt on the life of Reverend Chikane, was fully articulated in the sworn statements that we submitted in terms of the directives. Thereafter, Mr Adriaan Vlok and I, through the agency of our legal representative, approached Advocate Anton Ackerman of the office of the National Prosecuting Authority with a view to negotiate a plea-agreement together with the other accused. Advocate Ackerman was not involved in the earlier decision to reject our applications in terms of the directives. He agreed to accommodate a plea-agreement in terms of the Criminal Procedure Act. The particulars that appear therein are largely based on the facts that we ourselves had already provided in our applications in terms of the directives. The National Prosecuting Authority was not aware of the role that had been played by Mr Adriaan Vlok and me. Should we not have voluntarily advanced this information, it would never have been exposed. Chris Smith, Gert Otto and Manie van Staden also had no knowledge of our involvement.



8(contd)

After the trial we all conveyed our sincerest regrets to reverend Chikane for the grief and suffering inflicted upon him, which he accepted in a spirit of magnanimity and forgivingness.

I ATTACHED HERETO A COPY OF MY SUBMISSION TO THE TRUTH AND RECONCILIATION COMMISSION OF 21 OCTOBER 1996 AS WELL AS A COPY OF THE PLEA-AGREEMENT IN TERMS OF SECTION 105A OF THE CRIMINAL PROCEDURE ACT, ACT 51 OF 1977 9 (AS AMENDED)

A handwritten signature in black ink, appearing to be 'RW' followed by a stylized flourish.

4. [REDACTED]

4.1 Did you apply for amnesty to the TRC?

No

4.2 If so, provide details and TRC reference number:

Not applicable

5. [REDACTED]

5.1 If you are currently serving your sentence, state if you have previously applied for parole:

Not applicable

5.2 If your application to be placed on parole were rejected, provide the reasons why your application was rejected:

Not applicable

This page must be initialed by applicant in presence of a Justice of the Peace or a Commissioner of Oath



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Department
Justice and Constitutional Development

[Handwritten signature]

[Handwritten signature]
Initial

5.3 If you are released on parole, what are the provisions of placement on parole?

63

(Please attach a copy of your parole conditions)

Not applicable

6.

The following documents must be attached to the application form:

- (a) An original set of your fingerprints.
- (b) A certified copy of the first page of your identity document.
- (c) Annexure A completed by political organisation/institution/body or liberation movement if they support your application.
- (d) Any documentation available regarding rehabilitation in prison and or after release from prison.

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7.

*(This part must be completed and each page initialed in the presence of and by a Justice of the Peace or a Commissioner of Oath)

I Johannes Velde vd M Erwe
Full names and surname) declare that the above information is true and correct.

Thus signed at Pretoria on the 27th day of March year 2008

[Signature]
Signature (Applicant)

1. Do you know and understand the contents of the statement?

Answer: Yes

2. Do you have any objection against taking the prescribed oath?

Answer: No

3. Do you consider the prescribed oath binding on your conscience?

Answer: Yes

A. I certify that the above-mentioned questions were put to me and that my answers thereto as reflected above were written down in my presence.

[Signature]
Signature of Declarant

B. I certify that the declarant has acknowledged that he/she knows and understand the contents of this declaration which was sworn to before me and the declarant's signature was placed thereon in my presence.

[Signature]
Justice of the
Commissioner of Oath

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Justice and Constitutional Development

Initial

[Handwritten Initials]

(Block letters)

65

Position (rank) _____ Ex Officio Republic of South Africa

Business Address _____
(Street address must be stated)

JOHANNES HENDRIK WAGENER
Kommissaris van Ede/Commissioner of Oaths
Praktiserende Prokureur/Practising Attorney RSA
KERKSTRAAT 833 CHURCH STREET
ARCADIA • 0083 • PRETORIA

Date 27/3/2008 Place Pretoria

OR

1. Do you solemnly confirm the contents of this declaration?

Answer _____

A. I certify that the above-mentioned question was put to me and that my answer thereto as reflected above was written down in my presence.

Signature of declarant

B. I certify that the declarant has acknowledged that he/she knows and understand the contents of this declaration which was confirmed before me and the declarant's signature was placed thereon in my presence.

Justice of the
Commissioner of Oath

Full first names and Surname _____
(Block letters)

Position (rank) _____ Ex Officio Republic of South Africa

Business Address _____
(Street address must be stated)

Date _____ Place _____

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**CONFIRMATION COMPLETED BY POLITICAL ORGANISATION/
INSTITUTION/BODY/LIBERATION MOVEMENT**

**IMPORTANT NOTE : THE MAKING OF A FALSE STATEMENT IS A
CRIMINAL OFFENCE**

DETAILS OF PERSON COMPLETING THE CONFIRMATION :

SURNAME : GELDENHUYS
FULL NAMES : Michiel Christian Wilhelm
IDENTITY NUMBER 2504075007087

**POLITICAL ORGANISATION/INSTITUTION/BODY/LIBERATION
MOVEMENT :**

Former South African Police

**CAPACITY WITHIN THE
ORGANISATION/INSTITUTION/BODY/LIBERATION MOVEMENT :**

Served as Commanding Officer of the Security Branch and also as Commissioner of Police.

PHYSICAL ADDRESS

32 Hutchinson Street
Extension 2
NIGEL
1491

POSTAL ADDRESS

P O Box 2158
NIGEL
1490

This page must be initialed by applicant in the presence of a Justice of the Peace
or a Commissioner of Oaths

Handwritten initials and signature:
ZW
[Signature]

2.

Phone number 011-8142670

Fax number -

E - mail address

DECLARATION

I, Michiel Christian Wilhelm GELDENHUYS, declare that I was the commanding officer of the Security Branch of the South African Police from 1 July 1974 till 31 May 1978 and from 1 June 1978 till 31 May 1983 the commissioner of the South African Police.

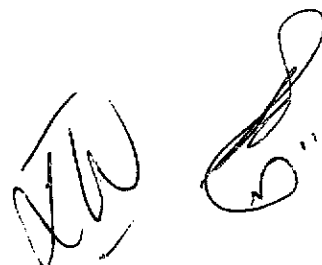
Mr Adriaan Vlok was the minister for law and order from 1 December 1986 till 31 August 1991.

General Johan van der Merwe, major-general Chris Smith and Colonels Gert Otto and Manie van Staden served as members of the South African Police under my command.

I have taken cognizance of the applications for pardon by Mr Adriaan Vlok and these former members of the South African Police, and although the offence for which pardon is sought, as stated in paragraph 2 of their application forms, had been committed after I retired as commissioner, I am thoroughly acquainted with all the circumstances. I have been closely involved in the amnesty process and the late general Johann Coetzee, general Johan van der Merwe and I were also engaged in negotiations with the Chairman of the Commission for Truth and Reconciliation, reverend Desmond Tutu as well as the deputy chairman, dr Alex Boraine. It is a well known fact that the SA Police Force of pre 1995 does not exist today. As the form designed for applications for Presidential pardon requires confirmation by the relevant political organisation/institution/body/ liberation movement of certain particulars relating to such applications, and bearing in mind the status of the present applicants, it is my firm belief that I am in the best position to do so.

I have been actively engaged in the conflict of the past and would like to advance the following details in support of their claim that the offence for which pardon is sought was committed to achieve a political objective.

The conflict and violence of the past took on various forms and covered wide-ranging scenarios which included combating guerrilla wars in both Namibia and Zimbabwe, as well as acts of terror, sabotage, killings and acts of mass mobilization and mob violence within the borders of the RSA.



2(contd)

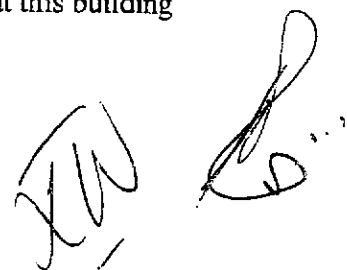
Members of the South African Police were employed and utilized with regard to all these terrains and accordingly, over a period of time, the training and operational deployment of the South African Police had of necessity to be adapted accordingly. This ultimately led to the natural consequence of the bringing about of drastic changes in the outlook, approach and training of that which previously had formed the foundation of an acceptable policing culture in a normal society. Amongst other things, the principles of minimum violence and the bringing of perpetrators before criminal courts were to be seriously affected and even eroded.

After the founding of the United Democratic Front (UDF) in 1983, it transpired that the levels of resistance and violence directed at the government and its institutions were to rise dramatically, thus forcing the government to implement drastic counter measures.

In the grey area that was to develop in the conflict and violence of the past, all parties became more and more desperate and various political leaders on both sides of the political spectrum exerted their forces to greater heights and pressurized them to achieve the utmost successes in carrying out their respective tasks. The statutory forces were thus required to adapt the methods and techniques which are normally employed in conventional warfare so as to function as effectively as possible.

In this life-and-death and often deadly struggle, the traditional distinction between combatants and non-combatants, between legitimate and illegitimate targets and, more importantly between acceptable and unacceptable methods were blurred. It was desperate times and members of the security branch of the South African Police literally had to work day and night in combating resistance, which by this stage encompassed a wide variety of different terrains. Political leaders adopted radical and quite often controversial attitudes which created the impression amongst their followers and subordinates that they were expected to either promote or oppose revolutionary strategies, no matter what methodology was employed. In this shadowy and often murky world, the required high level of secrecy involved often resulted in a partial or total lack of proper and effective communication. The operator found himself more and more in a situation where mere survival became paramount and the objective quite often justified the means.

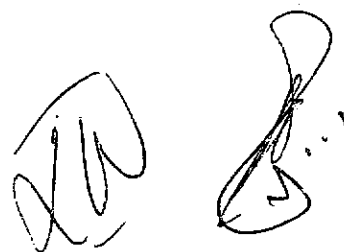
Reverend Frank Chikane was the secretary-general of the South African Council of Churches and also the vice-president of the United Democratic Front. The South African Council of Churches not only supported the ANC/SACP-Alliance, but played an active role to promote the interests of the alliance. The head-office of the South African Council of Churches was accommodated in Khotso-House. It was common knowledge within security circles at the time that this building

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2(contd)

served as a sort of "internal headquarters" of the ANC/SACP-alliance where resistance campaigns, unrest and violence were planned and where financial and other assistance was provided to MK-members who had infiltrated into the country. According to information explosives were also stored in the basement of the building. Despite being in possession of specific information regarding certain unlawful activities taking place in Khotso-house and the involvement of certain officials of the South African Council of Churches, the security branch was powerless in putting a stop to it as no informer or agent was prepared to give evidence in court regarding such activities. At that stage it was common practice that in all cases where the slightest suspicion existed, the suspected informant or agent was eliminated in the most brutal and gruesome fashion of which the necklace method was the most popular.

As secretary-general of the South African Council of Churches and more important as vice-president of the United Democratic Front, reverend Chikane played an important role to destabilize the country, to promote economic sanctions and to strengthen the revolutionary climate. He was a thorn in the flesh of the government of the day and it was regarded as imperative that his activities should be curtailed and neutralized. These circumstances eventually lead to the attempt on the life of reverend Chikane.



3.

Mr Adriaan VLOK, gen Johan van der MERWE, major-general Chris SMITH, colonels Gert OTTO and Manie van STADEN be pardoned for the following reasons

Mr VLOK, in his capacity as minister for law and order, and the former members of the South African Police, were all engaged in a life-and-death struggle as comprehensively stated already.

All political parties and organizations involved in the negotiations for a new constitutional dispensation in South Africa unanimously agreed that amnesty should be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflict of the past.. I would like to quote the following paragraphs of the epilogue to the Interim Constitution :

“”...The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear guilt and revenge.

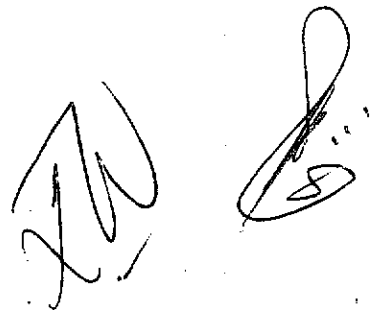
These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past.....”

In terms of these provisions the PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT [ACT 34 OF 1995] was promulgated and the Commission for Truth and Reconciliation established. The process that followed has unfortunately been clouded in uncertainty from the outset and did not adhere to the spirit and the essence of the Interim Constitution.

3(contd)

Mr Adriaan Vlok and the former members of the South African Police associated themselves whole heartedly with these provisions and did everything possible to sustain the TRC-process. The requirements of the Act for the Promotion of National Unity and Reconciliation relating to applications for amnesty by former members of the South African Police, was excessive and demanding and if all the circumstances in their particular case are considered, the granting of a pardon to Mr Vlok and the former members of the Police would honour the spirit and essence of the Interim Constitution, as agreed between all the parties to the negotiating process.

Two handwritten signatures in black ink, one on the left and one on the right, positioned at the bottom right of the page.

SIGNATURE AND OATH OR AFFIRMATION

*(This part must be completed and each page initialed in the presence of and by a Justice of the Peace or a Commissioner of Oath)

I Michiel Christian Wilhelm Goldenhuys
(Full names and surname) declare that the above information is true and correct.

Thus signed at Pretoria on the 27th day of March year 2008

[Signature]

Signature (Declarant)

1. Do you know and understand the contents of the statement?

Answer: Yes

2. Do you have any objection against taking the prescribed oath?

Answer: No

3. Do you consider the prescribed oath binding on your conscience?

Answer: Yes

A. I certify that the above-mentioned questions were put to me and that my answers thereto as reflected above were written down in my presence.

[Signature]

Signature of Declarant

3. I certify that the declarant has acknowledged that he/she knows and understand the contents of this declaration which was sworn to before me and the declarant's signature was placed thereon in my presence.

[Signature]
Justice of the Peace
Commissioner of Oath

Full first names and Surname

(Block letters)

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the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



[Signature]

Position (rank) _____

JOHANNES HENDRIK WAGENER
Kommissaris van Ede/Commissioner of Oaths
 Praktiserende Prokureur/Practising Attorney RSA
 KERKSTRAAT 833 CHURCH STREET
 ARCADIA • 0083 • PRETORIA

Ex Officio Republic of South Africa

Business Address _____

(Street address must be stated)

Date

27/3/2008

Place

Pretoria

OR

1. Do you solemnly confirm the contents of this declaration?

Answer _____

- A. I certify that the above-mentioned question was put to me and that my answer thereto as reflected above was written down in my presence.

Signature of Declarant _____

- B. I certify that the declarant has acknowledged that he/she knows and understand the contents of this declaration which was confirmed before me and the declarant's signature was placed thereon in my presence.

Justice of the Peace
Commissioner of Oath

Full first names and Surname _____

(Block letters)

Position (rank) _____

Ex Officio Republic of South Africa

Business Address _____

(Street address must be stated)

Date _____

Place _____

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Department
 Justice and Constitutional Development
 REPUBLIC OF SOUTH AFRICA



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APPLICATION FORM

SPECIAL DISPENSATION FOR PRESIDENTIAL PARDON IN RESPECT OF OFFENCE(S)
ALLEGED TO HAVE BEEN COMMITTED TO ACHIEVE A POLITICAL OBJECTIVE

ALL ENQUIRIES MUST BE DIRECTED TO :

MR N. GAWULA

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

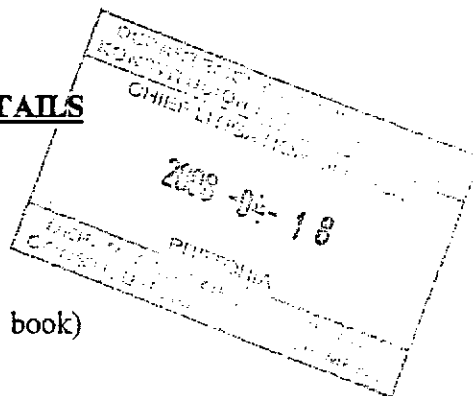
TEL : 012-357 8573/8626

FAX : 0866 193 443

MOBILE : 082 466 8969

1. PERSONAL AND CONTACT DETAILS1.1 PERSONAL DETAILS :Surname: **Vlok**

Full names (as they appear in your ID book)

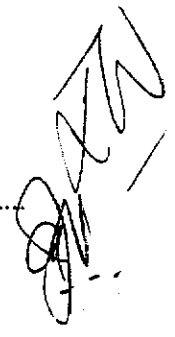
Adriaan JohannesIdentity number: **371211 5063 080**1.2 CONTACT DETAILS:

2. DETAILS OF OFFENCE(S) FOR WHICH PARDON IS SOUGHT

OFFENCE (NAME OF OFFICER) (List each offence separately)	DATE OF OFFENCE	PLACE WHERE OFFENCE WAS COMMITTED	DATE OF CONVICTION	COURT	CASE NUMBER	SENTENCE
Attempted Murder	23/04/1989	Jan Smuts Airport Kempton Park	17/08/2007	High Court Pretoria		10 Years imprisonment, wholly suspended for 5 years on certain conditions

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or a Commissioner of Oath

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Initial



3. PARTICULARS OF OFFENCE(S) AND MOTIVATION FOR REQUEST

3.1 Provide the following details:

3.1.1 How was the offence(s) committed (details of what happened during the commission of the offence(s):

3.1.1.1 In respect of the offence mentioned in paragraph 2 above, I and 4 others were charged and convicted together and all of us now apply for a presidential pardon in this regard. The 5 applications will be filed simultaneously. The individuals are:

Johannes Velde Van der Merwe
Adriaan Johannes Vlok
Christoffel Lodewikus Smith
Gert Jacobus Louis Hosia Otto
Hermanus Johannes Van Staden

3.1.1.2 The full background to the incident in question and the political motivation thereto, has been dealt with in the application of Johannes Velde Van der Merwe and will therefore not be repeated herein. As I fully associate myself with the content thereof and confirm the correctness thereof in so far it relates to me and the role that I played, I hereby request the President to incorporate such background into this application.

3.1.2 Why was the offence committed:

3.1.2.1 See in this regard the application of J V van der Merwe, with annexures thereto.

3.1.2.2 I was duly aware that the security forces and more specific the Security Branch of the South African Police were engaged in a life and death struggle. We were required to adapt certain methods and techniques which are normally employed in convential warfare. Serious and reprehensible abuses occurred on all sides of the multifaceted struggle. Members of the South African Police and their families were murdered and maimed, in some cases in the most gruesome way. Any person suspected to assist the police was branded a collaborator and murdered in a barbaric and brutal way, often by means of the so-called necklace method.

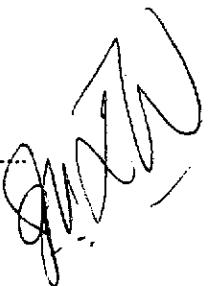
For further background information, I also attached hereto copies of the following judgments of the Amnesty Committee of the TRC:

a) Khotso House.

b) Introduction to the judgment in respect of Jack Cronje.

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- 3.2 Was any person injured or killed or did anyone suffer and damages to property as a result of such offence(s) and the extent of any injury and/or damage also please provide contact details of victims, if available:

Yes. Reverend Fank Chikane suffered organophosphate poisoning as a result of the attempt on his life.

Contact details:

Director General
Office of the President
Union Buildings
Pretoria

- 3.3(a) Did you benefit personally in any way by committing the offence(s)

No. In no way whatsoever

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or a Commissioner of Oath**

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Initial

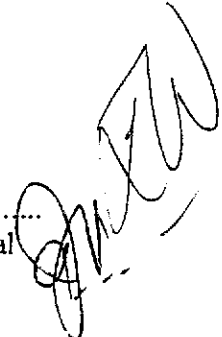


(b) If so, explain the nature and extent of such benefits:

Not applicable

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3.4(a) Was the offence(s) committed in the execution of an order of, the approval of, or authorized or in terms of a policy of an organization, by a political party or organization, institution, liberation movement or body and if yes, state the name of the political party, organization, institution, liberation movement or body:

- (i) See in this regard the application of Johannes Velde Van der Merwe with annexures thereto.
- (ii) Although the order/instruction to act against Rev. Chikane did not originate with me, I received it, and act upon it – passing it on for implementation. I can not distance myself from it. I have to take co-responsibility for it. This I did and was eventually prosecuted for it.

However, as I did not know who gave the original order, I am at this stage unable to determine this, all the possible individuals passed away: Mr. P W Botha (State President and leader of the National Party) and Gen. Kat Liebenberg, who chaired the meeting attended by Genl. Van der Merwe.

- (b) If so, you may state the particulars of such order or approval or policy and the date thereof and the name(s), address(es), telephone number(s) or any other contact details of the person(s) who gave such an approval or order:

See in this regard the application of Johannes Velde van der Merwe, with annexures thereto.

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- (c) What were the political objective, if any, you sought to achieve by committing the offences(s)?

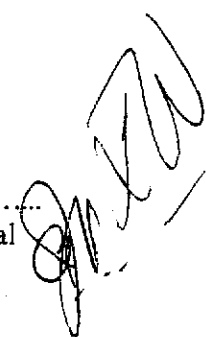
As explained in detail in paragraph 3.1.2 under the heading "Why was the offence(s) committed".

- (d) Did your organization, institution, body or liberation movement benefit from the commission of the offence(s)?

At the time my colleagues and I were of the opinion that operations aimed at individual leaders of the erstwhile political struggle would benefit us in our opposition to the armed struggle. However, today and with the benefit of hindsight, that may be a debatable view.

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.....
Initial



- 3.5 (a) Were you an officer/officer-bearer/member/supporter of any political organization / institution/body/liberation movement at the time that offence(s) was/were committed. If so, in what capacity did you serve?

Yes, I was an office bearer of the National Party: Transvaal (defunct does not exist any more).

Member of Parliament and Minister of Government

- (b) Membership number, if any:

None

- (c) Date when you became a member of the organization/institution/body or liberation movement:

± 1960

- 3.6 State reasons why it would be in the public interest if the President should grant you a pardon

See in this regard the application of Johannes Velde Van der Merwe, specifically as far as it is applicable to my own position and with which I totally associate myself.

My own actions and activities since 1994 (that is after the end of apartheid), are well known and well documented. In this regard I respectfully tender the following information and also attached copies of a few relevant documents.

- I became a reborn christian.
- Newspaper clippings number (1) – (4) pertaining to my amnesty applications in respect of Khotso House, COSATU House, etc.
- The feet-washing of Rev. Frank Chikane and 9 mothers from Mamelodi – newspaper clippings number (a) – (f).
- Copy of the "letter from the President" in respect of the Chikane matter, dated 8-14 September 2006.
- Since that date I have been busy with:
 - a) Assisting these mothers by putting food on their tables every month.
 - b) Addressing numerous meetings (in churches and elsewhere) on "forgiveness and reconciliation".
 - c) Addressing ± 250 inmates in Pretoria Central Prison (22 November 2007) after the completion of a course on "Restorative Justice". Since then I have been actively involved with the assistance of two individual prisoners. I think this concept of restorative justice is a wonderful step in the right direction and the way forward. As the urge for revenge is still prevalent in the minds of the majority of victims, there is still a very long way to go, but it is the right thing to do.
- Although having a criminal record does not trouble me much within South Africa, the problem is abroad. Many countries do not issue a visum to individuals like me. During February 2008 I was invited by church organizations to address outreach rallies in Rwanda regarding the question of forgiveness and reconciliation. In view of this problem and the sensitivity surrounding it, I did not apply for a visum. They have now urged me to reconsider and go there in the near future.

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4. **TRUTH AND RECONCILIATION (TRC) APPLICATION DETAILS**

4.1 Did you apply for amnesty to the TRC?

No, not in this regard. Please see paragraph 3.6.1 of statement of Johannes Velde van der Merwe. Full details and particulars of this incident only came to my notice during February 2006.

4.2 If so, provide details and TRC reference number

Not applicable

5. **PAROLE HISTORY**

5.1 If you are currently serving your sentence, state if you have previously applied for parole

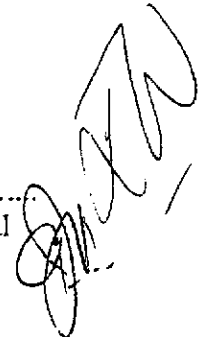
Not applicable

5.2 If your application to be placed on parole were rejected, provide the reasons why your application was rejected:

Not applicable

This page must be initialed by applicant in the presence of a Justice of the Peace or a Commissioner of Oath

.....
Initial



- 5.3 If you are released on parole, what are the provisions of placement on parole?
(Please attach a copy of your parole conditions)

Not applicable.

6. DOCUMENTS REQUIRED

The following documents must be attached to the application form:

- (a) An original set of your fingerprints.
- (b) A certified copy of the first page of your identity document.
- (c) Annexure A completed by political organization/institution/body or liberation movement if they support your application. _____
- (d) Any documentation available regarding rehabilitation in prison and or after release from prison.

**This page must be initialed by applicant in the presence of a Justice of the Peace
or a Commissioner of Oath**

.....
Initial



7. SIGNATURE AND OATH OR AFFIRMATION

*(This part must be completed and each page initialed in the presence of and by a Justice of the Peace or a Commissioner of Oath)

I ADRIAAN JOHANNES VLOK
(Full names and surname) declare that the above information is true and correct.

Thus signed at PRETORIA on the 15 day of April year 2008.


Signature (Applicant) - -

1. Do you know and understand the contents of the statement?

Answer YES

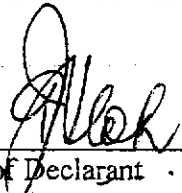
2. Do you have any objection against taking the prescribed oath?

Answer NO

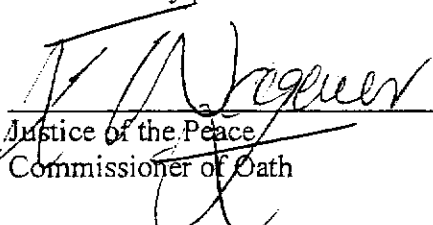
3. Do you consider the prescribed oath binding on your conscience?

Answer YES

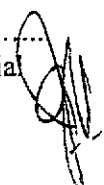
A. I certify that the above-mentioned questions were put to me and that my answers thereto as reflected above were written down in my presence.


Signature of Declarant

B. I certify that the declarant has acknowledge that he/she knows and understands the contents of this declaration which was sworn to before me and the declarant's signature was placed thereon in my presence.


Justice of the Peace
Commissioner of Oath

This page must be initialed by applicant in the presence of a Justice of the Peace or a Commissioner of Oath

.....
Initial 

Full first names and surname _____

(Block letters)

Position (rank) **JOHANNES HENDRIK WAGENER**
Kommissaris van Ede/Commissioner of Oaths
Praktiserende Prokureur/Practising Attorney RSA Ex Officio Republic of South Africa

Business Address **KERKSTRAAT 833 CHURCH STREET**
ARCADIA • 0083 • PRETORIA

(Street address must be stated)

Date: 15/4/2008 Place: Pretoria

OR

1. Do you solemnly confirm the contents of this declaration?

Answer _____

- A. I certify that the above-mentioned questions were put to me and that my answers thereto as reflected above were written down in my presence.

 Signature of Declarant

- B. I certify that the declarant has acknowledge that he/she knows and understands the contents of this declaration which was sworn to before me and the declarant's signature was placed thereon in my presence.

 Justice of the Peace
 Commissioner of Oath

Full first names and surname _____

(Block letters)

Position (rank) _____ Ex Officio Republic of South Africa

Business Address _____

(Street address must be stated)

Date: _____ Place: _____

**This page must be initialed by applicant in the presence of a Justice of the Peace
 or a Commissioner of Oath**

.....
 Initial

**CONFIRMATION COMPLETED BY POLITICAL ORGANISATION/
INSTITUTION/BODY/LIBERATION MOVEMENT**

**IMPORTANT NOTE : THE MAKING OF A FALSE STATEMENT IS A
CRIMINAL OFFENCE**

DETAILS OF PERSON COMPLETING THE CONFIRMATION :

SURNAME: Botha

FULL NAMES: Roelof Frederik

IDENTITY NUMBER: 320427 5036 080

**POLITICAL ORGANISATION/INSTITUTION/BODY/LIBERATION
MOVEMENT:**

Former Government of South Africa

**CAPACITY WITHIN THE
ORGANISATION/INSTITUTION/BODY/LIBERATION MOVEMENT:**

Minister for Foreign Affairs and acting State President during 1991

**PHYSICAL ADDRESS OF HEAD OFFICE OF THE ORGANISATION/
INSTITUTION/ BODY/LIBERATION MOVEMENT:**

None. NP now defunct.

POSTAL ADDRESS:

None. NP now defunct.

ATW
R+B

PHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

DECLARATION :

I, Roelof Frederik Botha, hereby declare on behalf of The former Government of the Republic of South Africa and the former National Party that A J Vlok was a member of the abovementioned organisation/institution/body/liberation movement when the offence(s) for which pardon is sought as stated in paragraph 2 of the application form, was/were committed, and that the offence(s) was/were committed to achieve the following political objectives of the organization/institution/body/liberation movement at the time of the offence(s):

Whilst acting as State President of the Republic of South Africa during 1991 I granted indemnity in terms of the Indemnity Act, Act 35 of 1990 to members of the African National Congress and all other persons for certain acts committed with political motives before 8 October 1990. The indemnity was published in Government Gazette No 13202 on 24 April 1991 and contained in Government Notice No R936 of the same date.

To qualify for such amnesty members of the ANC and other persons had to subscribe to peaceful solutions and developments and furnished full information as required in terms of the said Government Notice.

During the negotiating process in the early 90's, Mr. Cyrus Vance, a former Secretary of State of the USA, visited South Africa as the special representative of the Security Council of the United Nations. During discussions between him and myself, I suggested that he should in his meeting with the ANC support the idea of a general amnesty for all persons who committed any act, omission or offence associated with a political motive in the course of the political conflict of the past.

Mr. Vance raised this matter with representatives of the ANC which resulted in Mr. Thabo Mbeki and Mr. Mathews Phosa meeting with me in my office in the Union Buildings. The meeting lasted about 3 hours and concluded with us agreeing that general amnesty should be supported by the Government and the ANC. When I reported this conversation to President F W de Klerk, he said that Minister Kobie Coetsee was the appropriate minister to handle the issue of amnesty and that I should convey the proposal to him. This I did. His initial reaction was negative and all my efforts to persuade him to consider general amnesty positively came to nothing. About 10 days after the meeting with the ANC representatives in my office, Mr. Mbeki enquired about the reaction of the Government. I had no alternative but to inform him that I encountered a negative reaction from Minister Coetsee, but that I was considering to take the matter up in the Cabinet. Mr. Mbeki responded by urging me to act urgently as he detected "second thoughts" among his own colleagues. The attitude of Mr. Coetsee remained negative, resulting in a further delay which in turn resulted in a growing reluctance among the ANC to support the idea. The reason why I strongly supported

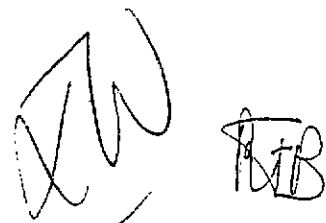
[Handwritten signatures]

2(contd)

general amnesty was that I foresaw severe obstacles in the ongoing negotiations between the Government and the ANC. I also held the view that the whole issue of amnesty was a complicated one and if this obstacle could be removed at an early stage, it would lessen the burden of both sides. In addition I had by then had personal and direct experience of how this issue was successfully dealt with in Namibia, being the minister responsible for the implementation of Security Council Resolution 435. I should also mention that part of my concept of general amnesty was the establishment of a tribunal whose function would have been to deal with the settling of grievances and damages suffered by victims and their families.

Many years later I learned of the attempt on the life of reverend Frank Chikane and the fact that Mr Adriaan Vlok, Generals Johan van der Merwe and Chris Smith as well as Colonels Gert Otto and Manie van Staden entered into a plea-agreement in that regard. I also took cognizance of the fact that according to them indemnity had been granted to them in terms of Government Notice No R936 dated 24 April 1991, but that the indemnity was rejected by the office of the National Prosecuting Authority.

Regarding the political objectives wished to be achieved by Mr. Vlok and the 4 policemen, I want to refer to the application by Van der Merwe and the annexures attached thereto.

The block contains two handwritten marks. On the left is a large, stylized signature that appears to be 'A. W.'. To its right are the initials 'B. B.' written in a similar cursive style.

I have verified the above-mentioned information as follows: I obtained information from database, newspaper archives and personal knowledge.

I am of the opinion that it would be in the public interest if A J Vlok and the 4 others receive pardon for the following reasons:

Please refer to my statement in this regard attached hereto.

I may also add:

All political parties and organizations involved in the negotiations for a new constitutional dispensation in South Africa unanimously agreed that amnesty should be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflict of the past.. I would like to quote the following paragraphs of the epilogue to the Interim Constitution :

"...The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear guilt and revenge.

*These can now be addressed on the basis that **there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization.***

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past....."

From what emerged from their court case during 2007, it is clear that Mr. Adriaan Vlok and the former members of the South African Police associated themselves whole heartedly with these provisions and did everything possible to sustain the TRC-process. If all the circumstances in their particular case are considered, the granting of a pardon to Mr Vlok and the former members of the Police would honour the spirit and essence of the Interim Constitution, as agreed between all the parties to the negotiating process.



I am of the opinion that A J Vlok will no longer be a threat or danger to society for the following reasons:

I have known Mr. Vlok for 42 years and I have served with him for 6 years in the Cabinet of Mr. P W Botha and Mr. F W de Klerk. The event of feet washing confirmed my conviction of the person of Adriaan Vlok.

AW
FNB

SIGNATURE AND OATH OR AFFIRMATION

*(This part must be completed and each page initialed in the presence of and by a Justice of the Peace or a Commissioner of Oath)

I ROELOF FREDERIK BOTHA

(Full names and surname) declare that the above information is true and correct.

Thus signed at Pretoria on the 14th day of April year 2008

RFB

Signature (Declarant)

1. Do you know and understand the contents of the statement?
Answer YES
2. Do you have any objection against taking the prescribed oath?
Answer NO
3. Do you consider the prescribed oath binding on your conscience?
Answer YES

- A. I certify that the above-mentioned questions were put to me and that my answers thereto as reflected above were written down in my presence.

RFB

Signature of Declarant

- B. I certify that the declarant has acknowledge that he/she knows and understands the contents of this declaration which was sworn to before me and the declarant's signature was placed thereon in my presence.

JH Wagener
Justice of the Peace
Commissioner of Oath

Full first names and surname _____
(Block letters)

JOHANNES HENDRIK WAGENER
Kommissaris van Ede/Commissioner of Oaths
Praktiserende Prokureur/Practising Attorney RSA
KERKSTRAAT 833 CHURCH STREET
ARCADIA • 0063 • PRETORIA

FINAL REPORT TO THE PRESIDENT ON A SPECIAL DISPENSATION RELATING TO OFFENDERS ALLEGEDLY CONVICTED OF OFFENCES IN PURSUIT OF A POLITICAL OBJECTIVE

January 2009

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1. INTRODUCTION

1.1 On the 21st November 2007, the former President of the Republic of South Africa, Mr Thabo Mbeki, in a Joint Sitting of Parliament announced a special dispensation of pardoning certain individuals who have been convicted of crimes before June 16, 1999 in furtherance of their political objectives. He announced a "window of opportunity," to apply for Presidential Pardon during the period January 15 to April 15, 2008, for those persons who were convicted for offences they believe were of the nature of the offences considered by the TRC. He said:

"I have decided to institute a special process to assist me as I discharge my constitutional obligation to consider the requests for pardon from people who have already been convicted for offences they claim belong among the category of offences that were considered by the TRC Amnesty Committee."

1.2 Such offenders would be given the opportunity to apply for a Presidential pardon to be considered in accordance with section 84(2) (j) of the Constitution of the Republic of South Africa Act, (Act No. 108 of 1996) (the Constitution). Due to some logistical arrangements at the commencement of the process the "window of opportunity" was later extended until 31st May 2008.

1.3 The President further announced that he was inviting all political parties represented in Parliament to nominate a representative to serve on a Reference Group that would advise him on whether or not to grant pardon to such applicants.

1.4 He further stated that:-

"In order to ensure that we do not undermine the work of the TRC, applicants who had applied to the Amnesty Committee established under the TRC Act and whose application for amnesty was refused, will not be considered for this Presidential pardon process."

1.5 On the 18 January 2008, the President established the Reference Group (hereinafter referred to as "the RG") to make recommendations on each application duly lodged in the process. All fifteen parties represented in Parliament accepted the invitation and nominated the following individuals:

Dr JT Delpont, MP	-	Democratic Alliance (DA)
Mr JB Sibanyoni, MP	-	African National Congress (ANC)
Mr H Cupido, MP	-	African Christian Democratic Party (ACDP)
Mr A Fourie	-	Freedom Front Plus (FF+)
Mr L Green, MP	-	Federal Democrats (FD)
Mr S Gudluza	-	Independent Democrats (ID)
Mr MS Lootz	-	National Alliance (NA)
Mr M Maivha	-	Pan-African Congress (PAC)
Mr BJR Masilo	-	United Christian Democratic Party (UCDP)
Mr B Nkabinde	-	National Democratic Convection (NADECO)
Mr HS Nobongoza	-	United Democratic Movement (UDM)
Ms S Rajbally, MP	-	Minority Front (MF)
Mr P Songo	-	African People's Convention (APC)
Mr NS Tloubatla	-	Azanian People's Organization (AZAPO)
Mr JH van der Merwe, MP	-	Inkatha Freedom Party (IFP)

1.6 The Secretariat was provided by the Department of Justice and Constitutional Development and consisted of:

Mr N Gawula (Head of the Secretariat);
Ms S Mkuzangwe;
Mr G Tooka;
Mr T Khambule;
Mr A Maneni;
Mr T Nkuna;
Ms A Alley-Umme; and
Mr S Ndunjane

1.7 The RG at its inaugural meeting held on the 6th February 2008 elected Dr JT Delpont MP as Chairperson of the RG. At a later stage Mr JB Sibanyoni MP was elected Deputy Chairperson.

1.8 All of the above members of the Group played an active part in the proceedings, with the exception of the

representatives of the Minority Front and of the Federal Democrats who did not attend the meetings. For all practical purposes the Group thus consisted of thirteen members.

1.9 At the outset of this process, the RG had until 30 September to finalize the processing of the applications for pardon. This was not possible as the number of applications for pardon received was beyond what was initially anticipated. At the request of the RG the date for finalization of the process was extended by the President until 30th November 2009.

1.10 On the 5th December 2008, the RG submitted a preliminary report to the President and informed the President that it could not finalize its work as there were approximately 340 applications referred back for more information. The President deemed it appropriate to extend the lifespan of the RG until the end January 2009 in order also to finalize those applications.

2. LEGISLATIVE CONTEXT

2.1 In the recent era, both prior to the commencement of the new Constitutional dispensation and thereafter, amnesty and indemnity laws were enacted and utilized to extinguish criminal (and in some instances civil) liability and to expunge criminal convictions and criminal records, of persons who committed offences arising from the political conflicts of the past before 10 May 1994. The lifespan of all these acts, namely the *Indemnity Act* (Act 35 of 1990), the *Further Indemnity Act* (Act 15 of 1992) and the last being the *Promotion of National Unity and Reconciliation Act, 1995* (Act 34 of 1995) ("the TRC Act"), has expired and can no longer be utilized.

2.2 Statements have been made that there are still persons who were convicted for having committed offences with an allegedly political motive, both before and after the 10 May 1994 cut off date set in the TRC Act. It is an accepted fact that some areas experienced a high level of political intolerance and even violence, well into the term of the first democratically elected President.

2.3 This state of affairs has been termed by some as "the *unfinished business of our democracy*". A number of political organizations have consistently requested that the President consider granting pardon to persons that have been found guilty of offences committed during these volatile times and committed with political intent.

2.4 The President has obviously decided not to deal with this matter in accordance with the legislative measures available in terms of section 82 of the *Correctional Services Act, 1998* (Act No 111 of 1998) or the available measures in terms of the *Criminal Procedure Act, 1977* (Act No 51 of 1977). His decision was to utilize the route of presidential pardon in terms of section 84(2)(j) of the *Constitution of the Republic of South Africa, 1996* ("the Constitution").

2.5 The decision on whether or not to grant a pardon is, in terms of section 84 (2)(j) of the Constitution, the prerogative of the President. This prerogative includes "...*pardoning or relieving offenders and remitting any fine, penalties or forfeitures.*"

2.7 In the judgment of *President of the Republic of South Africa v Hugo* 1997(6) BCLR 708 (CC), the Constitutional Court came to the conclusion that the exercise of the powers to pardon under section 82(1) of the Interim Constitution (now section 84(2) (j) of the 1996 Constitution) by the President, "...*is not a private act of grace in the sense that the pardoning power in a monarchy may be. It is a recognition in the interim Constitution that a power should be granted to the President to determine when, in his view, the public welfare will be better served by granting a remission of sentence or some other form of pardon.*"

2.8 The Constitutional Court further held:
"In cases where the President pardons or relieves a single prisoner it is difficult,.....to conceive of a case where a constitutional attack could be mounted against such an exercise of the presidential pardon.....No prisoner has the right to be pardoned, to be relieved or to have a sentence remitted. The interim Constitution places such matters within the power of the President."

2.9 The Constitutional Court further described two situations in which the power to pardon may be important, namely-

- (a) *to correct mistaken convictions or reduce excessive sentences; and*
- (b) *to confer mercy on individuals or groups of convicted prisoners, when the President thinks it will be in the interest of the public welfare for that to happen.*

3. THE TERMS OF REFERENCE OF THE RG

- 3.1 The Terms of Reference of the Reference Group (see **Annexure A**) ("the TOR") refers to a "special dispensation on presidential pardoning process relating to certain offenders".
- 3.2 The RG was clearly created as an advisory body in the nature of a commission to the President; the task of the RG is to make recommendations to the President for the exercise of his constitutional power. Each application had therefore to be individually scrutinized and evaluated. It was accepted that, though the President would seriously consider the RG's recommendations, he would be obliged to and indeed would form an independent opinion.
- 3.3 In terms of the TOR applications by the following individuals would be considered:
- 3.3.1 convicted persons for allegedly having committed politically motivated offences before 16 June 1999 and
 - 3.3.2 is presently serving a sentence of imprisonment; or
 - 3.3.3 was sentenced to a term of imprisonment or a fine.
- 3.4 The following categories of persons were excluded from being considered:
- 3.4.1 persons convicted of offence(s) relating to:
 - 3.4.1.1 any act of a sexual nature;
 - 3.4.1.2 any act of a domestic violence nature,
 - 3.4.1.3 any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), which relates to the manufacture and supply of scheduled substances, the use and possession of drugs and dealing in drugs;
 - 3.4.2 persons who applied to the Committee on Amnesty established under the TRC Act if his or her application for amnesty was refused; and
 - 3.4.3 persons who have not complied with all the prescribed pre-requisites on or before the 31st May 2008.
- 3.5 The TOR further required the RG to determine the *criteria* to be applied and procedure to be followed in order to determine whether an offence for which a presidential pardon is applied, was "political" and ought to be recommended.
- 3.6 The RG accepted that its existence, powers and duties were governed by the Terms of Reference.

4. THE CRITERIA USED IN MAKING RECOMMENDATIONS

- 4.1 The Terms of Reference called upon the RG to develop its own *criteria* for determining whether an offence should be regarded as "political". In this regard the RG defined its objective as follows:

"Whereas the founders of the new democratic era in South Africa considered it a key element that the division and strife of the past with its violent conflicts and history of hatred, fear, guilt and revenge be transcended;

and whereas amnesty for crimes committed in the course of these conflicts was regarded as an instrument to achieve reconciliation and reconstruction,

and whereas "amnesty" must be understood in its most comprehensive and generous meaning to take South Africa from the shame of the past to the promise of the future;

and whereas the Reference Group was constituted at the instance of the President to assist him in the evaluation of applications for presidential pardon,

the RG will utilize this opportunity to contribute to the ideal of reconciliation by advising the President in a spirit of even-handedness and justice on an equal basis for all".

- 4.2 Taking into account the historical evolution of the process of amnesty and the role of Presidential Pardon in this regard, the RG adopted the *criteria* set forth in the Norgaard Principles (as also endorsed and incorporated in the TRC Act) as the point of departure when determining whether the offence was to be classified "political".

- a. Whether or not an offence is political depends on the facts and circumstances of each individual case. The question is thus approached on a case by case basis.
- b. Certain offences are recognized as "purely" political, e.g. treason directed solely against the State and not involving a common or "ordinary" crime such as murder or assault or the dissemination of subversive literature.
- c. In certain circumstances a "common" crime, even a serious one such as murder, may be regarded as a political offence. Here the following are the principal factors which are commonly taken into account by national courts:
 - i. The motive of the offender - i.e. was it a political motive (e.g. to change the established order) or a personal motive (e.g. to settle a private grudge);
 - ii. The context in which the offence was committed, especially whether the offence was committed in the course of or as part of a political uprising or disturbance;
 - iii. The nature of the political objective (e.g. whether to force a change in policy or to overthrow the Government);
 - iv. The legal and factual nature of the offence, including its gravity (e.g. rape could never be regarded as a political offence);
 - v. The object of the offence (e.g. whether it was committed against Government property or personnel or directed primarily against private property or individuals);
 - vi. The relationship between the offence and the political objective being pursued, e.g. the directness or proximity of the relationship, or the proportionality between the offence and the objective pursued;
 - vii. The question whether the act was committed in the execution of an order or with the approval of the organisation, institution or body concerned; and
 - viii. Whether the applicant has been rehabilitated during his incarceration.

4.3 The RG accepted that the very nature of its presidential brief evidenced the fact that it would be in the broader public interest to pardon "political" offenders towards advancing national reconciliation. However: The RG was well aware of risk in setting free persons that may prove to be a danger to society. It was difficult to assess whether an offender had been rehabilitated, taking into account that all applicants went through some form of rehabilitative programme within the Correctional Services facilities. The approach of the RG was to determine whether there was any indication that the applicant would still pose a danger to society. To address this fear, the RG obtained all relevant information that the Department of Correctional Services could provide on the applicant's parole applications, of rehabilitation programmes completed by the applicant and any comments by the correctional services authorities that may be useful in determining whether an applicant would be a danger to society.

4.4 The criteria applied by the Reference Group in respect of recommendations thus rested on the following two main criteria:

- (i) That the applicant was indeed a "political offender" and that it would therefore be in the public interest to grant a pardon to the applicant ; and
- (ii) *that the applicant's release would not endanger society.*

5. THE PROCEDURE AND PROCESS FOLLOWED

5.1 The RG sat periodically for 49 days. Members received the applications in advance of the sessions, were expected to and did come prepared. The session days thus do not include the time spent on preparation. The RG dealt with 2150 applications. The list of all applicants is attached as **Annexure B**.

5.2 The Group dealt with each application individually and sought to objectively establish the following facts:

5.2.1 The particulars of the offence(s):

5.2.1.1 The nature and gravity of the offence(s),

5.2.1.2 Circumstances upon which the offence(s) were committed, and

5.2.1.3 Date and place where the offence(s) were committed.

5.2.2 The finding of the court and the sentence imposed;

- 5.2.3 The motive of the applicant;
- 5.2.4 To what extent the applicant or his organisation benefited or had hoped to benefit;
- 5.2.5 If he avers that he acted with a political intent, in terms of what policy or order did he act; and
- 5.2.6 Whether there is corroboration or verification of the applicant's submissions.

5.3 The Applicant was required to provide his version of the above facts in his application form. In many applications the RG came to the conclusion that pardon should not be recommended on the strength of the Applicant's own version as the Applicant in his own words did not satisfy the *criteria* for pardon. In instances where the RG was of the opinion that the Applicant's own version satisfied the *criteria*, the RG, before making a positive recommendation for pardon, required confirmation of or other information about the facts presented by the Applicant. In most cases the judgement of the Court was obtained. Confirmation by the political party of the applicant also assisted the RG. In this regard it needs to be noted that the political parties acted with restraint and responsibility and in many instances the political party concerned stated that the applicant was unknown and as far as the parties were aware, had not been a political activist.

5.4 In many instances the RG needed corroboration of the facts and consequently insisted on the Court judgment of the trial. In an attempt to provide the judgment and sentence to the RG, the Secretariat had to visit the High Courts in search of the said judgments and sentence. This was a very useful exercise as a number of judgments were retrieved. In some jurisdictions of courts, records did not exist or could not be found or were destroyed.

5.5 Paragraph 2.4 of the Terms of Reference makes provision for the RG to develop its rules and procedures in considering applications for pardon for purposes of making recommendations to the President. The rules and procedures followed were as follows:

- (i) All applications before being sent to all members of the RG were screened by the Secretariat for purposes of compliance.
- (ii) Each member of the RG received volumes of applications to be tabled at the meeting prior to the session of the RG more than a week in advance in order that members scrutinize each application.
- (iii) During the meeting of the RG the chair called upon a member to introduce and give an overview of the application.
- (iv) The members thereafter embarked on an open discussion, taking into consideration the laid down *criteria*.
- (v) If the RG was of the opinion that further information was required, the application was referred back to the secretariat to obtain such information, which consisted in most cases of a copy of the judgment and sentence.
- (vi) In many applications it was imperative to determine the true motive of the applicant when the offence was committed: to determine, in other words, *why* and with what *objective* the crime had been committed. The court judgment and sentence was helpful in this regard if the general background and circumstances of the offence was not known or clear.
- (vii) If an application was referred back, it was only re-tabled once the required information was received.
- (viii) If an application was complete and all required additional information or verification was obtained, the RG discussed the application and made a recommendation to the President.
- (ix) The RG strived to reach unanimity on all recommendations. In a few cases where unanimity could not be reached, the recommendation indicated that the decision had been taken by a majority vote, noting the number of members for and against. Both views were recorded. Members were allowed to table minority reports and in a number of cases members made use of this opportunity.
- (x) All recommendations made by the RG in respect of the applications were signed by the Chairperson of the RG.

6. THE NATURE OF SUBMISSIONS MADE BY VARIOUS APPLICANTS

When assessing applications for purposes of making recommendations, it soon became apparent that most of the applicants relied on a political motive as a reason or justification for committing the offence(s). In their submissions, they often did not disclose how and under which circumstances the offences were committed. The following are common allegations made in the submissions:

- 6.1 Cash-in-transit heists or bank robberies were offered as being committed in order to secure funds for political activities in the name of "fundraising" or "repossession" or to purchase arms for purposes of defending themselves and/or their organizations.
- 6.2 Farm attacks and murders were offered as being inspired by the statements such as "Kill the Boer, kill the Farmer" and "one settler one bullet".
- 6.3 Robbery and killings were said to be done with the political motive to "repossess" or to ameliorate the injustices of the past.
- 6.4 Offences relating to the attacks and killing between political rivals such as Self Defence Units (SDU's) and Self Protection Units (SPU's) were used as a reason for ordinary non-political violence. This was also the case in regard to offences committed during the period when violent confrontations between the ANC and UDM, between the IFP and ANC and between the UDM and IFP took place in KwaZulu-Natal and elsewhere in the country. It was often difficult to determine whether a crime was indeed committed with a *political* intent and the RG was cautious not to accept a statement to that effect if it was not corroborated in any way.
- 6.5 In many other instances applicants attempted to introduce a flavour of political strife whilst in fact the offence committed was the result of confrontations within a particular organization itself, was caused by labour disputes, was caused by racism or racial insults, had to do with witchcraft or arose as a result of family feuds (which, in certain cases had some political basis but could not be classified as "political violence" in terms of the *criteria*).
- 6.6 In a number of cases the RG could not come to a definitive conclusion: in a number of cases the application could succeed *on the word of the applicant alone*. In the absence of any corroboration or party support or judgment that gave the background to the crime, the RG recorded *Not recommended because of insufficient information. To put trust on the version of the Applicant alone, extreme caution was exercised*.

7. THE APPLICATIONS: DIFFERENT CATEGORIES

- 7.1 As has been pointed out above, it was clear from the start that the RG's greatest challenge in every single application would be to determine whether the applicant was indeed involved in a "political" confrontation. In this regard it was important to take cognizance of the background against which the offence was committed. Once that was clear, it fell to determine whether that political impetus was indeed the driving force leading to the offence or whether the applicant acted in terms of his own agenda.
- 7.2 It was soon apparent that the RG could distinguish different categories when the background against which the different offences were committed, was taken into account. These categories will be dealt with *seriatim*.

7.2.1 Offences committed before 1994

A small number of offenders in this category were recommended for presidential pardon. Many offenders in this category had of course applied to the TRC and were either granted (and thus did not need pardon) or were denied amnesty (and would thus not qualify for pardon) as contemplated in TOR's. A case in point in this category, are the five (5) former security members who received amnesty during the TRC process but did not apply for amnesty with regard to the incident relating to Reverend Frank Chikane.

The RG's task in this regard was eased by the fact that the confrontation between the State and the Liberation Movements is fairly well known and defined. The RG was extremely cautious not to regard applicants who described themselves as "freedom fighters" to have acted in that capacity whilst they were in actual fact common criminals that robbed and murdered civilians; the RG did not accept at face value statements that murders and robberies were committed with the political objective of undermining an unjust system. Equally so, the RG was cautious not to summarily accept that members of the then security forces were politically driven in cases where personal interest or gain or even racism was a motive.

There were also a number of Applicants whom exploited the political violent situation for their selfish ends. These were ordinary criminals whereupon the RG exercised careful consideration. The following were recommended for pardon:

NAME	SURNAME
1. Johannes Velde	Van Der Merwe
2. Andriaan Johannes	Vlok
3. Hermanus Johannes	Van Staden

NAME	SURNAME
4. Gert Jacobus Louis Hosea	Otto
5. Christoffel Lodewikus	Smith
6. Pieter Hendrick	Groenewald

7.2.2 "Political Offences" post 1994

The RG realised that the fact that the President set 16 June 1999 as the cut off date and, implied that there were indeed "political" offences committed after 1994. The following categories emerged and were carefully analyzed and evaluated in order to determine whether the relevant situation could be described as a "political conflict":

(i) **PAGAD**

A number of applicants claimed that they committed crimes while they acted as members of *People Against Gangsterism and Drugs* (Pagad), that they acted against social evils and were compelled to do so because the government of the day, in particular the law enforcement agencies, failed to protect the communities in the Western Cape.

Two members were of the view that these applications should be dealt with as political offences; the majority however, was of the opinion that the actions of these offenders were in the nature of vigilantism and could not be classified as "political" offences within the context of the Terms of Reference of the current exercise. Each case would in any event be carefully evaluated as there are suggestions that in some of these instances an element of gangsterism was present and that the offences were committed out of rivalry with other gangs. This is true in cases where drug related gangsters fought for turfs for purposes of commercial space. The RG is not equipped to embark on such an investigation.

The RG does however, **recommend to the President to give consideration to the position of Pagad members who were found guilty of offences committed in a genuine attempt to rid society from the evil influence and role of gangsters and also be mindful of ordinary gangsterism. None of the Applicants were recommended for pardon in this regard.**

(ii) **Taxi violence**

A number of applications were clearly the result of taxi "turf wars". Some of them were clothed in political terms in order to create the impression that the offence originated in some political motive. The majority of such cases emanated from the Western Cape and KwaZulu-Natal. The Group however, did not find any basis for such a finding in any of these applications. No Applicant was recommended for pardon in this category.

(iii) **Stock Theft**

Actions against the perpetrators of stock theft formed the basis of a number of applications. These cases were prevalent in the former Transkei areas wherein the applicants submitted that, in the absence of law enforcement, they wanted to curb livestock theft and intended to protect their livestock from thieves in the rural areas. The majority of the RG members were of the opinion that a political motive cannot be ascribed to the category of these applicants. They further argued that the majority of them took the law into their own hands by committing these offences. The RG was of the opinion that these applications were of the same nature and should be dealt with on the same basis as the Pagad applications. These applications may well merit careful consideration but not in terms of the RG's brief.

(iv) **"Re-possession", arms acquisition and "fund-raising"**

In many applications falling in this category the bland statement is made by the applicant that his offence was committed with the political motive to repossess property to which he had a moral claim, to individually seek redress for past injustices or to acquire arms to "defend" himself or his political party against aggression from other parties. The offences involved in such applications were mostly armed robbery with aggravating circumstances, which often led to the death of innocent civilians, security guards and policemen.

The RG was careful not to recommend pardon in instances where the motive was in fact personal gain; in other words, the RG did not lightly classify offences involving *individual* attempts at retribution (or re-distribution) and arms acquisition as *political offences*. The RG insisted on some form of clear confirmation before an offender's

word that he acted on behalf of his party, was accepted. There was a view that offences in this category could *never* qualify as offences *committed with a political motive*.

A more difficult set of facts arose where offenders claimed that they committed the crime in order to raise funds for their political party. These offences were also mostly armed bank robberies and cash in transit heists. The PAC representative informed the RG that APLA had a repossession unit which was specifically tasked to commit cash heists and indeed committed a spate of robberies pursuant to their political strategic objective pre-1994. The RG was informed by the PAC representative that this policy was abandoned in December 1993, but that certain "fund-raising" and "repossession" units continued to operate until just before the 1999 elections though, in some instances still with the support and condonation by PAC party officials in Annexures A (Political Party Supporting Affidavit). This matter was intensely debated. The RG insisted on some form of confirmation that the party in fact benefited from the offence in order to be satisfied that it was not merely an attempt at self enrichment.

The PAC officially endorsed some of the applications but in most cases did not accept that the applicants acted on behalf of the party.

In two cases the applications were recommended by majority vote of seven (7) to six (6). In these cases the PAC certified and endorsed the commission of the offences on the basis of fundraising for the 1999 elections. In one instance there was an additional affidavit from PAC official confirming that the Applicant was part of an APLA "fundraising unit" and that the spoils were paid over to the PAC during the armed struggle and beyond. Though the PAC representative confirmed that the armed struggle was suspended in December 1993, there was uncertainty with regard to the PAC policy decision in terms of the "repossession/fundraising units" post 1994.

The RG afforded the PAC representative who is a member of the RG an opportunity for his party to clear this uncertainty which to date has not been forthcoming. The majority of RG members argued that without condoning the crimes in any way, these deeds were committed in terms of PAC policy, and thus regarded them as political whilst the minority argued that the PAC became part of a new democratic South Africa, took part in the elections and had seats in Parliament and also received state funds which in effect barred them from actively promoting policies which could lead to criminal deeds, for example, armed robberies and cash heist particularly for party funding. The following applicants in this category are recommended for pardon:

NAME	SURNAME
1. Leonard Mandla	Majikijela
2. David Zibuseleni	Nene
3. Toko Maria	Ngcukana
4. Eric	Williams
5. Collen Mzwandile	Gonya
6. Johannes Mbuso	Mkhize
7. Musa Solomon	Ntuli
8. Bonginkosi Simon	Mchunu
9. Dennis Thonto Sipho Mhlupheki	Mkhonza
10. Petros Fana	Mkhatshwa
11. Thulani Innocent	Zwane Socenywa
12. Edward Ndwakhulu	Nkhumeleni

(v) *Violence between political parties*

The post 1994 situation was rife with violent political confrontations between the IFP and ANC and between the ANC and UDM.

The RG was very careful to establish as a fact that an applicant was indeed involved for his party in an inter-party conflict; only where it was established that the party as such was involved and the commission of the offence was not as a result of an individual on a personal vendetta or grudge, did the RG recommend pardon.

The following applicants fell in this category:

NAME	SURNAME
1. Dumisani Solomon	Mshengu
2. Bhekani Russel	Ngubo
3. Thamsanqa Obedient	Memela
4. Mthokozisi Innocent	Ntuli
5. Mbusi Nhlanhla	Mahlinza
6. Velaphi Raphael	Mkhize
7. Mandlenkosi Mandlendoda Rodney	Khumalo
8. Muzikayifani Cleopas	Khumalo
9. Terrence Bhekizizwe	Sima
10. Mzokhona Ambrose	Ngubane
11. Masenti Themba	Nxumalo
12. Clarence Bonginkosi	Vapi
13. Ntshengedzeni Summerscle	Netshikweta
14. Sikhumbuzo Victor	Mphambane
15. Ephraim Moeketsi	Khosa
16. Qalokwakhe Lawrence	Gumede
17. Simon Magalane	Khawula
18. Mondl Smesh	Dlamini
19. Sifiso Erick	Cele
20. Muzi Thomas	Msibi
21. Willard	Mhlana
22. Sandile Billal	Cele
23. Isaah Klevusa	Khumalo
24. Sandile Reginald	Dladla
25. Buzuyise Errol	Dladla
26. Martin Collin Abner Mmapeteke	Sehlapelo
27. Alex Thulebona	Magubane
28. Prince Reginald Nkosana	Mavuso
29. Khululekani Moses	Mnqayi
30. Zwelihle Howard	Dlamini
31. Nhlanhla Innocent	Mhlongo
32. Saxon Madoda	Dlamini
33. Thokozani S'fiso	Gwacela
34. Wilton Bongani	Mthembu
35. Mandleqondo	Mathonsi
36. Joseph Thuthukani	Cele
37. Nhlanhla Dennis	Nkonyeni
38. Maxson Similo	Mkutswana
39. Siyabonga Obed	Thusi
40. Mthokozisi Ntoko	Ndlovu
41. Mika Mphiliseni	Ntshangase
42. Hopewell Themba	Ngcobo
43. Mbulelo Ellen	Booi
44. Luthando Arthur	Njingolo
45. Themba Thulani	Nhlumayo

Particular violent and in some instances gruesome offences were committed in the Richmond area. In attempt to deal with similar cases on the same basis, it was resolved that cases where there are groups applicants they should be dealt with as a group. In these cases it was not clear to the RG which applicants were involved in which incident. The Richmond spate of killings linked to the killing of Sifiso Nkabinde was particularly difficult to unravel in that it was difficult to get clarity on the different incidents and who were involved in each incident.

The RG sought the assistance of the political parties for confirmation under oath as to which applicants were involved in which incidents. The RG sought the assistance of the political parties for confirmation under oath as to which applicants were involved in which incidents surrounding the death of the late Sifiso Nkabinde.

The RG was unanimous in its finding to recommend pardon for these groups of applicants. The following applicants fell in this category:

NAME	SURNAME
1. Dennis Thulasizwe	Mbanjwa
2. Fakazi Lincoln	Mbikwana
3. Sipho	Mtolo
4. Mfiki Ian	Zuma
5. Phumlani	Phungula
6. Mzophilayo	Jili
7. Mbhekiseni Joel	Mkhize
8. Siphiwe James	Shabane
9. Zakariah	Phoswa
10. Mashe	Mngadi
11. Herman Lee	Ngubane
12. Mxolisi	Dlamini
13. Musa	Khumalo
14. Dumisani Emmanuel	Ndlovu
15. Nhlanhla Freeman	Hlengwa
16. Mbongeni Emmanuel	Nzimande
17. Sikhumbuzo Patrick	Ndlovu
19. Zothani Tshepiso Brain	Latha
20. Sandile Gift	Dlamini
21. Anil	Jelal
22. Mbongeni	Mjwara
23. Mthembeni Robert	Khuboni
24. Bongani Derrick	Nkabinde
25. Nkosinathi Paul	Ndlovu
26. Simanga Emmanuel	Dlamini
27. Vulindlela Blessing	Nkabinde
28. Sipho Edward	Mtungwa

(vi) Reactionary violence by AWB et al

A number of applications stemmed from violence committed by members of the AWB and their associates in reaction to the new democratic order. The RG did classify actions by these forces as of a political nature where it was established that the offences were committed with the intention to destabilize and eventually to overthrow the government.

Once again the RG was cautious not to recommend pardon where an applicant was driven by hatred or racism.

The RG judged the Kuruman incident where a strike developed into violent attacks on private property which in turn caused AWB members and supporters to react violently, as a political confrontation. Two of the members however, disagreed and were of the opinion that the reaction of the AWB members was vigilantism and cannot be regarded as of a political nature.

Other recommendations in this category as for instance the Worcester bombings and the attempted Tempe Military Base theft of arms and the Mankana/Rustenburg bombings, were taken unanimously. In this category the following applicants are recommended for pardon:

NAME	SURNAME
1. Jan Jurgens	Groenewald
2. Hans Jacob	Wessels
3. Willem Jacobus Petros	Jacobs
4. Gerber Hendrick	Jacobus
5. Reyno Adriaan	Rossouw
6. Gerhardus Johannes	Taljaardt
7. Nicolaas Clifton	Barnard
8. Johannes Benjamin	Van Der Westhuizen
9. Daniel Stephanus	Coetzee
10. Christiaan	Harmse
11. Hendrick Eferhardus	Du Preez
12. Marius Jan	Swanepoel
13. Pierre	Jacobs
14. Heinz Dietrich Guenter	Jasson
15. Joseph Adriaan	Duplessis
16. Arend Christiaan	De Waal
17. Alexander George	Whitehead
18. Ryan	Albutt
19. Abraham Liebrecht	Myburgh
20. Hendrik Jacobus	Gerber

(vii) **Farm attacks and killings**

A number of applications relating to attacks on and killing of white farmers, were dealt with.

These offences related to murder, attempted murder and robbery with aggravating circumstances. The majority of applicants stated that they were repossessing what belonged to their forefathers. They further argued that they had been incited by slogans like "Kill the Boer, Kill the farmer" and "One settler, one bullet". In all these cases tabled before the RG, the RG found that the motive was either pure greed or was racially motivated and consequently criminal in nature. None of these applications were recommended for pardon by the RG except for Tshona with a stay of vote 4/4.

8. STATISTICAL DATA ON PROCESSING OF APPLICATIONS

8.1 Two thousand one hundred and nine applications for pardon were received during this process. These exclude applications lodged after 31st May 2008. The following table gives a statistical overview of the applications received and processed:

1. Applications received (see Annexure B)	2109
2. Applications lodged after 31 st May 2008 (See Annexure C)	10
3. Applications recommended for pardon (see Annexure D)	120
4. Number of applications where no unanimity was reached. (See Annexure E)	29
5. Applications not recommended for pardon (see Annexure F)	1313
6. Applications disqualified ¹ (see Annexure G)	683

¹ Applications falling outside the cut of date, applicants who were denied amnesty by TRC, applicants convicted of offences of a sexual nature, domestic violence and drug related offences.

9. MAJORITY AND MINORITY RECOMMENDATION

- 9.1 Paragraph 10.3 of the Terms of Reference state that "the recommendation made by the RG in respect of each application for pardon must reflect the majority as well as the minority views of members, if any, in respect of each application".
- 9.2 There were 29 applications where RG members had different opinions on whether or not pardon should be recommended to the applicant. In this regard, intensive debates amongst RG members ensued, but no unanimity was reached on these applications. The following table illustrates votes (majority and minority views of the RG members) recorded in these category of applications.

No	Surname	Name	Reference No	Recommended	Not Recommend
1.	Bapela	Sethlong	2120/	4 Votes	6 Votes
2.	Chappie	Lemmy Marabe	2036	8 Votes	2 Votes
3.	Chepape	Percy Kutu	1659	1 Vote	12 Votes
4.	Godolozzi	Phethuxolo Aubrey	853	12 Votes	1 Vote
5.	Gwamanda	Simon Thulani	523	2 Votes	8 Votes
6.	Juqu	Bhekisigcino Cyprian	1482	12 Votes	1 Vote
7.	Kawe	Lundi	2111	5 Votes	3 Votes
8.	Khumalo	Petros Magazi Justice	445	4 Votes	6 Votes
9.	Kimbili	Mbuzeli John	1671	6 Votes	3 Votes
10.	Kole	Toki Peter	1658	1 Vote	12 Votes
11.	Mkhize	Lennox Mpumeleli	1672	6 Votes	3 Votes
12.	Mmutle	Ronald Duke Thuso	2106	4 Votes	6 Votes
13.	Mncube	Bhekekhaya Elias	610	7 Votes	3 Votes
14.	Mncube	Elphas Tholindawo	611	7 Votes	3 Votes
15.	Mncube	Lamlani Alson	612	7 Votes	3 Votes
16.	Mofokeng	Richard Thapelo	2125	7 Votes	3 Votes
17.	Mogudi	Nelson Raditshukudu	704	6 Votes	5 Votes
18.	Motsemme	Henry	2114	8 Votes	2 Votes
19.	Mpinda	Thandile	1721	5 Votes	5 Votes
20.	Mpoae	Solomon Tebogo	1661	1 Vote	12 Votes
21.	Mpuaga	Thabo Gragory	2138	4 Votes	6 Votes
22.	Msomi	Sibusiso	1660	7 Votes	6 Votes
23.	Mtsemela	Richard	2105	5 Votes	3 Votes
24.	Ngomane	Sipho Barnabas	1676	4 Votes	6 Votes
25.	Nkosana	Mzoxolo Wiseman	1675	2 Votes	8 Votes
26.	Sibiya	Siphamandla Emmanuel	88	2 Votes	9 Votes
27.	Tshona	Marshall	2108	4 Votes	4 Votes
28.	Vena	Xolisile	1740	9 Votes	1 Vote
29.	Zikhali	Nelson	1618	4 Votes	6 Votes

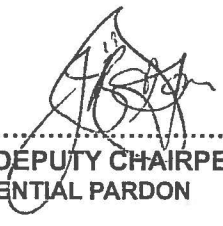
10. FINAL COMMENTS

- 10.1 It was a privilege for the RG to make a contribution towards the "closing of the book" on our history of confrontation and violence.
- 10.2 The RG, having dealt with so many applications, is still unanimously of the opinion that there are indeed other incidents that ought to receive the attention of the Executive if full closure is to be achieved. These matters have been raised with the President in an earlier interim report and the RG again refer to and affirm the recommendations made in that interim report.
- 10.3 The RG expresses its appreciation to the President for having entrusted this important function to the members.
- 10.4 Lastly, our great appreciation to the work done by the Secretariat and the commitment it has shown to the Reference Group during the process.



CHAIRPERSON

On behalf of the REFERENCE GROUP for PRESIDENTIAL PARDON



DEPUTY CHAIRPERSON

ANNEXURE A

TERMS OF REFERENCE FOR A SPECIAL DISPENSATION ON PRESIDENTIAL PARDONING PROCESS RELATING TO CERTAIN OFFENDERS

1. **WHEREAS** there are individuals convicted for having committed offences they believe were in pursuit of political objectives;
2. **AND WHEREAS** prior to the commencement of the new Constitutional dispensation and thereafter, amnesty and indemnity laws were enacted and utilized to extinguish criminal (and in some instances civil) liability and/or expunge criminal convictions of persons who committed offences before 1994 arising from the conflicts of the past, [with a political objective] from their criminal records, such pieces of legislation, namely the Indemnity Act (Act 35 of 1990), the Further Indemnity Act (Act 15 of 1992) and the Promotion of National Unity and Reconciliation Act, 1995 (Act 34 of 1995) ("the TRC Act"), has expired and can no longer be utilized to deal with the existing matter at hand.
3. **AND WHEREAS** the President considered all other relevant statutory provisions, did not find any existing measures suitable to deal with the specific matter at hand;
4. **AND WHEREAS** Section 84(2)(j) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) as amended provides that the President is "**responsible for pardoning or relieving offenders and remitting any fines, penalties or forfeitures**".
5. **AND WHEREAS** the President has declared a special dispensation for obtaining closure on the matters relating to the convictions of those persons who allegedly committed offences in pursuit of political objectives.

NOW THEREFORE:

1 ESTABLISHMENT OF A REFERENCE GROUP (RG)

- 1.1 A Reference Group consisting of representatives of political organization is hereby established.
- 1.2 At the first sitting of the Reference Group, members must amongst themselves, appoint a Chairperson who will chair all the meetings of the Reference Group.

2. RESPONSIBILITY OF THE REFERENCE GROUP

- 2.1 Receiving of all screened applications for pardon from the Department of Justice and Constitution Development (DOJ&CD).
- 2.2 Ensure that each application for pardon is completed in a prescribed manner.
- 2.3 Consider each application for pardon and make recommendations to the President.
- 2.4 The RG must develop its own rules and procedures in considering each application for pardon for

purpose of making recommendations to the President based on each application.

- 2.5 The RG must communicate its rules and procedures to DOJ&CD within fourteen days (14) days from of its first sitting.

3. ADMINISTRATIVE SUPPORT TO THE RG

- 3.1 The DOJ&CD will provide administrative and secretarial support to the RG.

4. SITTING OF THE REFERENCE GROUP

- 4.1 The sitting of the RG shall be in Cape Town or any other location as may be determined by the RG in consultation with the DOJ&CD.

5. FINANCIAL IMPLICATIONS

- 5.1 No member shall be remunerated for his or her services in the RG.
- 5.2 The DOJ&CD shall be responsible for all logistical and travelling expenses of members of the RG.
- 5.3 All logistical arrangements relating to the work of the RG shall be made by a designated official within the DOJ&CD.

6. LIFESPAN OF THE REFERENCE GROUP

- 6.1 The RG shall exist for the period as from the date of its first meeting to a date on which its business is finalized, both dates inclusive, the latter date shall be not later than 30th September 2008.

7. WHO QUALIFIES FOR PARDON

- 7.1 Persons who were convicted and sentenced solely on account of allegedly having committed politically motivated offences before June 16, 1999; and
- 7.2 Comply with the pre-determined criteria and procedures as set out in the application form, may apply to the President for pardon in the prescribed manner.
- 7.3 A person will only qualify for consideration for pardon if –
- (a) he or she
 - (i) is presently serving a sentence of imprisonment;
 - (ii) was sentenced to a term of imprisonment or a fine
 for an offence which arose from or is related to, an act or omission associated with a political objective committed in the course of the conflicts of the past;
 - (b) the offence referred to in paragraph (a) was committed on or before the date of the inauguration of the President on 16 June 1999; and
 - (c) his or her application for pardon is accompanied by a prescribed affidavit or affirmation deposited to or affirmed by a person authorized by a political party or organization, institution

liberation movement or body, in which it is confirmed that the act or omission which constituted the offence in question, occurred under the instruction of, or in the execution of an order, instruction, command, direction, advice, plan or project of, or on behalf of, or with the approval of, or in furtherance, promotion or achievement of the policies, objectives or interests of, the said party, organization, institution, liberation movement or body of which the applicant was a member, agent or a supporter.

8. WHO DOES NOT QUALIFY FOR PARDON

8.1 A person will not qualify for consideration for pardon if –

- (a) he or she has been convicted of an offence relating to:
 - (i) any act of a sexual nature;
 - (ii) any act of a domestic violence nature,
 - (iii) any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), which relates to the manufacture and supply of scheduled substances, the use and possession of drugs and dealing in drugs;
- (b) he or she applied to the Committee on Amnesty established under the TRC Act and his or her application for amnesty was refused; and
- (c) he or she has **NOT** complied with all the prescribed pre-requisites **on or before** the three (3) month “window of opportunity” has expired.

9. LODGEMENT OF APPLICATION

- 9.1 Only applications which are completed properly and fully in the prescribed manner, including on a prescribed form specially designed for the purpose of this special dispensation, within the period of the “window of opportunity, will be considered.
- 9.2 Only an application lodged by an individual will be considered. An application must be made by an individual applicant as prescribed and submitted to the DOJ&CD.
- 9.3 A political party to which the applicant belongs may also submit the application to the DOJ&CD on his / her behalf.
- 9.4 In the event of the application being submitted by the political party on behalf of the applicant; the political party must:
 - 9.4.1 ensure that the application has been completed in the prescribed manner;
 - 9.4.2 confirm under oath that the alleged circumstances around which the offence was committed are correct or consistent with the political events / activities of which the political party was part.

10. RECOMMENDATIONS BY THE RG

- 10.1 All recommendations made in respect of applications for pardon must be submitted to the President.
- 10.2 Recommendation by RG shall be made in respect of each application for a pardon.
- 10.3 The recommendation made by the RG in respect of each application for pardon must reflect the majority as well as the minority views of members, if any, in respect of each application.
- 10.4 The President has the power to reject the recommendations made by the RG.

11. POWER TO GRANT PARDON

- 11.1 The President after considering the recommendations made by the RG, has the power to grant or refuse an application for pardon.
- 11.2 No person has the right to be pardoned by the President.
- 11.3 The granting of a pardon to any person will lead to the expungement of the conviction and the criminal record of the offence in respect of which he or she is granted pardon.

Enquiries: Mr Neville Gawula

Director: Office of the Chief Litigation Officer

Department of Justice and Constitutional Development

Tel: (012) 357 8573

Mobile: 082 466 8968

ANNEXURE D

LIST OF APPLICANTS RECOMMENDED FOR PARDON BY THE REFERENCE GROUP

No	Surname	Name	Prison / ID No	Reference No
1.	Albutt	Ryan	206364825	260
2.	Barnard	Nicolaas Clifton	5604215007000	419
3.	Booi	Mbulelo Ellen	202337207	2099
4.	Cele	Joseph Thuthukani	7311245565084	550
5.	Cele	Makhaya Nkosikhona	7211225424080	548
6.	Cele	Sandile Billal	97479687	330
7.	Cele	Sifiso Erick	96480631	549
8.	Coetzee	Daniel Stephanus	7710225001087	228
9.	De Waal	Arend Christiaan	206364821	69
10.	Dikutle	Joseph Kedibone	-	114
11.	Dladla	Buzuyise Errol	95188971	554
12.	Dladla	Sandile Reginald	98475201	424
13.	Dlamini	Mondi Smesh	97190038	539
14.	Dlamini	Mxolisi Hendry	6712025563085	2077
15.	Dlamini	Sandile Gift	23110120	284
16.	Dlamini	Saxon Madoda	6706055404087	1076
17.	Dlamini	Simanga Emmanuel	200463811	89
18.	Dlamini	Thembinkosi William	7304075608082	103
19.	Dlamini	Zwelihle Howard	201181542	268 (Except for 1998 Robbery)
20.	Du Plessis	Jozef Adriaan	7310135069082	100
21.	Du Preez	Hendrick Eferhardus	200100523	403
22.	Gonya	Collen Mzwandile	95014930	1623
23.	Groenewald	Jan Jurgens	-	73
24.	Groenewald	Pieter Hendrick	6112125197084	13
25.	Gumede	Qalokwakhe Lawrence	96479783	520
26.	Gwacela	Thokozani S'fiso	7802015680087	324
27.	Harmse	Christiaan	200399967	404
28.	Hlengwa	Nhlanhla Freeman	97457303	274
29.	Jacobs	Pierre	6506015025083	390
30.	Jacobs	Willem Jacobus Petros	206364820	71
31.	Jacobus	Gerber Hendrick	-	99
32.	Jasson	Heinz Dietrich Guenter	2050468	831
33.	Jelal	Anil	-	285
34.	Jili	Mzophilayo Petros	200463204	271
35.	Khawula	Simon Magalane	96480632	527
36.	Khosa	Ephraim Moeketsi	6607155300086	139
37.	Khuboni	Mthembeni Robert	201459658	95
38.	Khumalo	Mandlenkosi Mandlendoda Rodney	97670004	294
39.	Khumalo	Muzikayifani Cleopas	201346025	295
40.	Khumalo	Velaphi Donald	205139875	266
41.	Latha	Zothani Tshepiso Brain	97457304	277
42.	Magubane	Alex Thulebona	6501055922083	2145
43.	Magwaza	Thulani Prince	200457606	84
44.	Mahlinza	Mbusi Nhlanhla	202460301	288
45.	Majikijela	Leonard Mandla	-	2039
46.	Mari	Tlali	98030941	109

No	Surname	Name	Prison / ID No	Reference No
47.	Mathonsi	Mandleqondo	6806055479087	493
48.	Mavuso	Prince Reginald Nkosana	5702165836087	1621
49.	Mbanjwa	Dennis Thulasizwe	-	261
50.	Mbikwana	Fakazi Lincoln	99197033	262
51.	Mchunu	Bonginkosi Simon	94271353/ 7103065476084	2130
52.	Memela	Thamsanqa Obedient	205139877	270
53.	Mhlana	Willard	97264937	1059
54.	Mhlongo	Nhlanhla Innocent	95201865	328
55.	Mjwara	Mbongeni	200463810	91
56.	Mkhatshwa	Petros Fana	6901075424088	2134
57.	Mkhize	Johannes Mbuso	94271354	2129
58.	Mkhize	Musa Bukhulubenkosi	96459950	2056
59.	Mkhize	Velaphi Raphael	94460621	289
60.	Mkhonza	Dennis Thonto Siphon Mhlupheki	96012446	1674
61.	Mkutswana	Maxson Similo	982644916	901
62.	Mngadi	Khombeyakhe Howard	96459649	2088
63.	Mnqayi	Khululekani Moses	98688350	265
64.	Mntungwa	Siphon Edward	20145989	93
65.	Molelekeng	Basimane David	-	236
66.	Mphambane	Sikhumbuzo Victor	7209096282082	76
67.	Mshengu	Dumisani Solomon	205139876	267
68.	Msibi	Muzi Thomas	98266875	1047
69.	Msibi	Thabile	6302190745087	2085
70.	Mthembu	Wilton Bongani	7702105824084	300
71.	Mtolo	Siphon Lewlight	202172313	282
72.	Myburgh	Abraham Liebrecht	97433104	230
73.	Ndlovu	Dumisani Emmanuel	97457301	273
74.	Ndlovu	Mthokozisi Ntoko	95194048	2066
75.	Ndlovu	Nkosinathi Paul	2014588487	96
76.	Ndlovu	Sikhumbuzo Patrick	97159858	276
77.	Nene	David Zibuseleni	94271357/ 6408165750088	2131
78.	Netshikweta	Ntshengedzeni Summerscle	-	52
79.	Ngcobo	Hopewell Themba	7201045738082	329
80.	Ngcukana	Toko Maria	-	191
81.	Ngubane	Herman Lee	97457492	806
82.	Ngubane	Mzokhona Ambrose	97198941	298
83.	Ngubo	Bhekani Russel	205139874	269
84.	Ngwenya	Paul	-	887
85.	Nhlumayo	Themba Thulani	200171860	558
86.	Njingolo	Luthando Arthur	6905135106080	2139
87.	Nkabinde	Blessing Vulindlela	200463811	92
88.	Nkabinde	Bongani Derrick	201457990	90
89.	Nkhumeleni	Edward Nndwakhulu	7106285915086	1794
90.	Nkonyeni	Nhlanhla Dennis	7410095314088	900
91.	Ntshangase	Mika Mphiliseni	6304145963088	624
92.	Ntuli	Mthokozisi Innocent	98463329	272
93.	Ntuli	Musa Solomon	97010244	2118
94.	Nxumalo	Masenti Themba	98452131	318
95.	Nyembe	Makhosini Clement Johannes	-	814

No	Surname	Name	Prison / ID No	Reference No
96.	Nzimande	Mbongeni Emmanuel	97458762	275
97.	Otto	Gert Jacobus Louis Hosea	4706165027085	417
98.	Phungula	Mbidli Phumlani	202172315	283
99.	Rossouw	Reyno Andriaan	206364826	199
100.	Sebastian	Femando	95196776	2084
101.	Sehlapelo	Martin Collin Abner Mmapeteke	-	927
102.	Shabane	Siphiwe James	99196890	264
103.	Shange	Richard Khethani	7455612	707
104.	Sima	Terrence Bhekizizwe	201479350	297
105.	Smith	Christoffel Lodewikus	3810275016086	418
106.	Stephens	Maureen	4507160502084	2150
107.	Swanepoel	Marius Jan	200130836	405
108.	Taljaardt	Gerhardus Johannes	206364823	68
109.	Thusi	Siyabonga Obed	7009205917085	609
110.	Van Der Merwe	Johannes Velde	3608255044080	414
111.	Van Der Westhuizen	Johannes Benjamin	5306215036084	420
112.	Van Staden	Hermanus Johannes	4412025003081	416
113.	Vapi	Clarence Bonginkosi	98483232	
114.	Vlok	Andriaan Johannes	3712115063080	415
115.	Wessels	Hans Jacob	207244901	75
116.	Whitehead	Alexander George	206364824	70
117.	Williams	Eric	94271356	2136
118.	Zakuza	Mbukeni Innocet	96480630	599
119.	Zuma	Mfiki Ian	202172312	281
120.	Zwane Socenywa	Thulani Innocent	95016485	2143

ANNEXURE E

LIST OF APPLICANTS WHERE NO UNANIMITY WAS REACHED

No	Surname	Name	Reference No	Recommended	Not Recommend
1.	Bapela	Sethlong	2120/	4 Votes	6 Votes
2.	Chappie	Lemmy Marabe	2036	8 Votes	2 Votes
3.	Chepape	Percy Kutu	1659	1 Vote	12 Votes
4.	Godolozzi	Phethuxolo Aubrey	853	12 Votes	1 Vote
5.	Gwamanda	Simon Thulani	523	2 Votes	8 Votes
6.	Juqu	Bhekisgcino Cyprian	1482	12 Votes	1 Vote
7.	Kawe	Lundi	2111	5 Votes	3 Votes
8.	Khumalo	Petros Magazi Justice	445	4 Votes	6 Votes
9.	Kimbili	Mbuzeli John	1671	6 Votes	3 Votes
10.	Kole	Toki Peter	1658	1 Vote	12 Votes
11.	Mkhize	Lennox Mpumeleli	1672	6 Votes	3 Votes
12.	Mmutle	Ronald Duke Thuso	2106	4 Votes	6 Votes
13.	Mncube	Bhekekhaya Elias	610	7 Votes	3 Votes
14.	Mncube	Elphas Tholindawo	611	7 Votes	3 Votes
15.	Mncube	Lamlani Alson	612	7 Votes	3 Votes
16.	Mofokeng	Richard Thapelo	2125	7 Votes	3 Votes
17.	Mogudi	Nelson Raditshukudu	704	6 Votes	5 Votes
18.	Motsemme	Henry	2114	8 Votes	2 Votes
19.	Mpinda	Thandile	1721	5 Votes	5 Votes
20.	Mpoae	Solomon Tebogo	1661	1 Vote	12 Votes
21.	Mpuaga	Thabo Gragory	2138	4 Votes	6 Votes
22.	Msomi	Sibusiso	1660	7 Votes	6 Votes
23.	Mtsemila	Richard	2105	5 Votes	3 Votes
24.	Ngomane	Sipho Barnabas	1676	4 Votes	6 Votes
25.	Nkosana	Mzoxolo Wiseman	1675	2 Votes	8 Votes
26.	Sibiya	Siphamandla Emmanuel	88	2 Votes	9 Votes
27.	Tshona	Marshall	2108	4 Votes	4 Votes
28.	Vena	Xolisile	1740	9 Votes	1 Vote
29.	Zikhali	Nelson	1618	4 Votes	6 Votes

GENERAL NOTICE

NOTICE 987 OF 2010

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

INVITATION TO VICTIMS AND INTERESTED PARTIES TO MAKE REPRESENTATIONS REGARDING CERTAIN PARDON MATTERS

The President is considering the applications of the 149 applicants mentioned in the Schedule, who have been recommended for pardon by the Reference Group and who are relying on a political motive and/or political objective for the offences for which they seek a pardon. Within the context of the national reconciliation and unity objectives of the special dispensation process of 2007, the President must make a final decision on whether to grant or refuse a pardon to these applicants.

The Department of Justice and Constitutional Development invites the victims of offences committed by the applicants for pardon and any parties with a direct or substantial interest in the applications for pardon under consideration by the President in terms of the special dispensation process of 2007, to make written representations on whether or not a pardon ought to be granted to a particular applicant.

Any person or party who wishes to make representations to The Presidency must notify the Secretariat in writing within 30 days of this publication. The Secretariat will respond to any communication received within 30 days. Thereafter such party will have a period of 30 days to lodge a detailed and substantiated written representation with the Secretariat. On receipt of communication from a victim or interested party the Secretariat will respond by way of a letter to the victim or interested party requesting that they, within a 30 day period:

- State in appropriate detail, whether or not, in his or her view, the offence(s) was/were politically motivated.
- Indicate, with reasons, whether they support the application for pardon.
- Indicate, with reasons, whether they object to the granting of a pardon.
- Victims should forward their written representations to the head of the Secretariat.

Victims or interested parties should forward their written notification and written representations to the Head of the Secretariat:

Mr Frederik Heyns

Director: Legal Process.

The Department of Justice and Constitutional Development, Private Bag X81, PRETORIA, 0001

or physical address

The Department of Justice and Constitutional Development, 1st Floor – Reception, Momentum Building, 329 Pretorius Street, PRETORIA, 0001

E-mail enquiries: PoliticalPardons@justice.gov.za

Telephone: Liana Nieuwoudt: Tel (012) 315 1278, Thulani Khambule: Tel (012) 315 4822, Fritz Willmot: Tel (012) 3151412

Fax: 086 6425 357

SCHEDULE
LIST OF APPLICANTS BEING CONSIDERED FOR A PARDON BY THE PRESIDENT

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
1.	Albutt	Ryan	- Culpable homicide - Assault (GBH); - Public violence	31/08/1995	Kuruman	12/01/2005	Regional Court, Kathu	CC KRC/37/99
2.	Bapela	Setlhong Paulos	-Murder -Unlawful possession of firearm -Unlawful possession of ammunition	-/07/1996	Temba	21/05/1998	High Court, Mmabatho	CC82/97
3.	Barnard	Nicolaas Clifton	-5 counts of murder -3 counts of attempted murder -2 counts of malicious damage of property -3 counts of sabotaging -Possession of weapons and ammunition -Theft -Escape from lawful custody	24/12/1996	Worcester	23/10/1997	Regional Court, Johannesburg	CC64/1994; CC41/35/97; SS31/97
4.	Booi	Mbulelo Ellen	Murder	28/01/1999	Kentane Kabakazi	19/06/2002	High Court, Mthatha	CC90/2000
5.	Cele	Joseph Thuthukani	-5 counts of murder -7 counts of attempted murder -4 counts of arson -Unlawful possession of hand grenade -Unlawful possession of firearm and ammunition	31/08/1998 12/09/1998	Izingolweni Sigodaneni	6/12/1999	High Court, Pietmaritzburg	CC81/8/98 CC26/9/98 CC28/9/98 (High Court Case no: 86/99)
6.	Cele	Makhaya Nkosikhona	-Murder -Public violence	1997	Izingolweni	30/05/2001 14/12/1999	Southern Circuit Court, Regional Court, Harding	CC21/01 HRC/98
7.	Cele	Sandile Billal	-4 counts of murder -Arson	04/04/1997	Shobashobane	12/15/1998	Circuit Court, Port Shepstone	CC100/98
8.	Cele	Sifiso Erick	-9 counts of murder -2 counts of attempted murder	02/04/1994	Emavundleni	03/04/1998	Circuit Court, Port Shepstone Pietermaritzburg	CC104/97

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
9.	Chappie	Lemmy Marabe	-Murder -Malicious damage to property	1984	Durban	Not provided	Not provided	Not provided
10.	Chepape	Percy Kutu	-3 counts of murder -Robbery	04/06/1997	Kuruman	17/09/1998	High Court, Mmabatho	CC58/98
11.	Coetzee	Daniel Stephanus	-4 counts of murder -3 counts of attempted murder -3 counts of terrorism -Sabotage	24/12/1996	Worcester, Beaufort West	26/08/1997	Western Cape High Court	CC5530/97
12.	De Waal	Arend Christiaan	-Culpable homicide -Public violence	31/08/1998	Kuruman	02/01/2005	Regional Court, Kathu	CC37/1999
13.	Dikutle	Joseph Kedibone	High treason	10/02/1988	Mmabatho	18/12/1989	Bosele Supreme Court, Mmabatho	Not provided
14.	Dladla	Sandile Reginald	-Robbery -Assault (GBH) -2 counts of murder -Attempted murder	04/06/1998	Estcourt	02/03/2000	High Court, Pietermaritzburg	CC66/99
15.	Dladla	Buzuyise Errol	12 counts of murder	26/12/1990 11/04/1994	Thafamasi Endwedwe	13/10/1995	High Court, Durban	CC95/95
16.	Dlamini	Mondi Smesh	-Murder -2 counts of attempted murder -Housebreaking with an intent to rob	11/02/1997 02/02/1997	Durban	24/05/2000 08/04/1998	High Court, Durban Regional Court, Verulam	CC87/2000 VRC309/97
17.	Dlamini	Mxolisi Hendry	2 counts of murder	20/03/1994	Richmond	07/06/1996	High Court, Pietermaritzburg	CC40/96
18.	Dlamini	Sandile Gift	-Murder -2 counts of attempted murder -Unlawful possession of two machine rifles -Theft of a motor vehicle	23/01/1999 19/01/1999	Richmond	19/10/2000	High Court, Pietermaritzburg	CC84/99
19.	Dlamini	Saxon Madoda	-2 counts of murder -3 counts of attempted murder -Unlawful possession of firearm	21/05/1997	Umlazi	26/05/1999	High Court, Durban	CC60/99
20.	Dlamini	Simanga Emmanuel	-21 counts of murder -14 counts of attempted murder	03/07/1999 23/01/1999 14/02/1999	Richmond	23/11/2000 11/09/2001	High Court, Pietermaritzburg	CC116/00 CC87/00 CC115/00

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
21.	Dlamini	Thembinkosi William	-2 counts of murder -Attempted murder	16/06/1997	Dambuza	12/06/1998	High Court, Pietermaritzburg	CC30/98
22.	Dlamini	Zwelihle Howard	-Murder -Kidnapping	13/09/1995	Impendle	22/07/2005	High Court, Pietermaritzburg	CC56/03
23.	Du Plessis	Jozef Adriaan	-Murder -2 counts of assault -Impersonating a police Officer	08/05/1998	Brakpan	17/02/2000	Circuit Court, Delmas	CC283/98
24.	Du Preez	Hendrick Eferhardus	-Housebreaking & theft -2 counts of theft of ammunition -2 counts of murder -Possession of illegal firearm -Kidnapping	-/05/1998 -/06/1998	Bloemfontein	-/07/2001	High Court, Bloemfontein	CC11/2000
25.	Godolozzi	Phethuxolo Aubrey	Robbery	18/11/1998	Umtata	23/05/2002	High Court, Umtata	CC182/99
26.	Gonya	Collen Mzwandile	-Murder -3 counts unlawful possession of firearm	09/08/1995	KwaThema	08/11/1998 24/04/1996 30/09/1994	Circuit Court, Delmas Regional Court, Springs	CC102/96 SH938/95
27.	Groenewald	Jan Jurgens	-Crimen Injuria -Malicious damage to property	-/03/1978	Pretoria	25/06/1979	Magistrate Court, Pretoria	CC18/21/97
28.	Groenewald	Pieter Hendrick	-2 counts of murder -Attempted murder	05/03/1990	Mamelodi	19/03/2003	High Court, North Gauteng	CC31/91
29.	Gumede	Qalokwakhe Lawrence	-9 counts of murder -2 counts of attempted murder	02/04/1994	Nkulu Ward (Port Shepstone district)	03/04/1998	Circuit Court, Port Shepstone	CC104/97
30.	Gwacela	Thokozani S'fiso	3 counts of murder	07/04/1997	Shobashobane	15/12/1998	Circuit Court, Port Shepstone	CC100/98
31.	Gwamanda	Simon Thulani	-2 counts of attempted murder -2 counts of murder	16/06/1998	Lindelani	29/03/2001	High Court, Durban	CC30/2001
32.	Christiaan	Harmse	-Attempted murder -Unlawful possession of firearm and ammunition	05/01/1997	Rustenburg/Marikana	15/09/2000	Regional Court, Rustenburg	SH12/1997

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
			-Unlawful possession of explosives -Sabotage					
33.	Hlengwa	Nhlanhla Freeman	-3 counts of murder -3 counts of attempted murder	17/03/1996	Richmond	11/03/1998	High Court, Pietermaritzburg	CC53/97
34.	Jacobs	Pierre	-Sabotage -Attempted murder	05/01/1997	Rustenburg	15/09/2000	Rustenburg	SH12/97
35.	Jacobs	Willem Jacobus Petros	Culpable homicide and Public violence	31/08/1995	Kuruman	12/01/2005	Regional Court, Kathu	KRC37/1999
36.	Jacobus	Gerber Hendrick	Trespassing on Military property Attempted theft of a firearm	10/02/1997	Pomfret	10/12/1997	Regional Court, Kimberley	RCO/312/97
37.	Jasson	Heinz Dietrich Guenter	Transgressing the Immorality Act	15/09/1968	Johannesburg	19/12/1968	Magistrate Court, Johannesburg	Not provided
38.	Jelal	Anil	-Accessory after the fact to murder -Possession of unlawful machine rifles	23/01/1999	Richmond	23/10/2000	High Court, Pietermaritzburg	CC84/99
39.	Jili	Mzophilayo Petros	Unlawful possession of rifle and ammunition	10/06/1999	Kwagengeshe	27/10/2000	Regional Court, Richmond	RC-742/99
40.	Juqu	Bhekisigcino Cyprian	-2 counts of murder -Robbery with Aggravating circumstances	25/06/1994	Tars Valley, Creighton	28/05/1996	High Court, Pietermaritzburg	CC38/96
41.	Kawe	Lundi	-Murder -Attempted murder -Robbery	06/06/1997	Mdantsane	15/02/2001	High Court, Bisho	CC/2/99
42.	Khawula	Simon Magalane	-9 counts of murder -2 counts of attempted murder	02/04/1994	Emavundleni	03/04/1998	Circuit Court, Port Shepstone	CC104/97
43.	Khuboni	Mthembeni Robert	-8 counts of murder -8 counts of attempted murder	03/07/1998	Richmond	04/05/2001	High Court, Pietermaritzburg	CC154/00
44.	Khumalo	Mandlenkosi Mandlondoda Rodney	-3 counts of murder -2 counts of attempted murder	24/12/1996	KwaMthethwa	31/03/1998	Circuit Court, Mtunzini	CC15/98
45.	Khumalo	Muzikayifani Cleopas	-Murder -Attempted murder	23/02/1997	Eskhawini	30/05/2002	Regional Court, Richards Bay	CRC257/000

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
46.	Khumalo	Velaphi Donald	-Murder -Kidnapping -Theft	13/09/1995	Impendle	10/07/2005	High Court, Pietermaritzburg	CC56/2003
47.	Khumalo	Petros Magazi Justice	-4 counts of murder -4 counts of attempted murder -4 counts of arson	13/09/1995	Mtubatuba	02/11/1998	Circuit Court, Mtunzini	CC114/98
48.	Kimbili	Mbuzeni John	-3 counts of armed robbery -3 counts unlawful possession of firearms -unlawful possession of ammunition	01/02/1992 29/03/1993 02/04/1993	Port Elizabeth	08/06/1993	Regional Court Port Elizabeth	SH1/147/93
49.	Kole	Toki Peter	-3 counts of murder -Robbery	04/06/1997	Kuruman	17/09/1998	High Court, Mmabatho	CC58/98
50.	Kosa	Ephraim Moeketsi	-Culpable Homicide -Common Assault	1995	Parys	Not provided	Regional Court, Parys	SH35/86
51.	Latha	Zothani Tshepiso Brian	-3 counts of murder -3 counts of attempted murder -Unlawful possession of firearm	Not provided	Richmond	11/03/1998	High Court, Pietermaritzburg	CC53/97
52.	Magubane	Alex Thulebona	-Murder -Attempted murder	-/10/1994	Mabhuquni Qhuden	22/12/1994	Mthunzini Court	CC23/96
53.	Magwaza	Thulani Prince	-Murder -Unlawful possession of firearm -Unlawful possession of ammunition	14/11/1997	Emgungundlovu (PMB)	27/01/2000	High Court, Pietermaritzburg	CC103/98
54.	Mahlinza	Mbusi Nhlanhla	-Murder -Attempted robbery	03/01/1999	J Extension Kwamancinza	08/04/2002	High Court, Durban	CC/04/2002
55.	Majikijela	Leonard Mandla	-Possession of firearm without a license -Possession of unlicensed ammunition	1994	Bloemfontein	14/12/1994	Regional Court, Bloemfontein	CC17/256/943
56.	Tlali	Mari	-Murder -Arson	08/11/1994	Masopha Village	11/06/1998	Circuit Court, Maluti	CC32/98
57.	Mandleqondo	Mathonsi	-2 counts of murder -2 counts of attempted murder	1995	Ehambé	22/11/1996	Mtubatuba Court	CC116/96
58.	Mavuso	Prince Reginald Nkosana	Theft of motor vehicle	-/05/1990	Johannesburg	01/10/1990	Magistrate Court, Johannesburg	Not provided

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
59.	Mbanjwa	Dennis Thulasizwe	Murder	23/01/1999	Richmond	30/03/2001	High Court, Pietermaritzburg	Not provided
60.	Mbikwana	Fakazi Lincoln	-Murder -2 counts of attempted murder -Unlawful possession of arms and ammunition -theft of a motor vehicle	23/01/1999 19/01/1999	Richmond Howick	19/10/2000	High Court, Pietermaritzburg	CC84/99
61.	Mchunu	Bonginkosi Simon	-Murder -4 counts of attempted murder -Robbery	15/07/1991	Stilfontein Mines	03/05/1994	High Court, Johannesburg	CC254/92
62.	Memela	Thamsanqa Obedient	-Murder -Kidnapping	13/09/1995	Impendle	10/07/2005	High Court, Pietermaritzburg	CC56/2003
63.	Mhlana	Willard	-Murder -Unlawful possession of firearm and ammunition	03/02/1991	Khalanyoni Hostel around Phola Park	27/08/1991	Regional Court, Germiston	Not provided
64.	Mhlongo	Nhlanhla Innocent	-2 counts of murder -Unlawful possession of firearm and ammunition	27/10/1995	Ohlanga	30/05/1997	High Court, Durban	CC67/97
65.	Mjwara	Mbongeni	-21 counts of murder -15 counts of attempted murder	03/07/1998 23/01/1999 14/02/1999	Richmond	13/08/2001 23/11/2000 11/09/2001	High Court, Pietermaritzburg	CC87/2000 CC116/2000 CC115/2000
66.	Mkhatshwa	Petros Fana	Murder	01/01/1997	Vosloorus	23/09/1997	High Court, Johannesburg	CC135/97
67.	Mkhize	Johannes Mbuso	-Murder -4 counts of attempted murder -Robbery	15/07/1991	Stilfontein Mines	03/05/1994	High Court, Johannesburg	CC254/1992
68.	Mkhize	Musa Bukhulubenkosi	2 counts of murder	20/03/1994	Richmond	07/06/1996	High Court, Pietermaritzburg	CC40/96
69.	Mkhize	Velaphi Raphael	-8 counts of murder -Attempted murder -Escape from lawful custody -Theft	Not provided	Umbumbulu	01/06/1995 13/02/1996	High Court, Pietermaritzburg	CC28/02 CC105/95
70.	Mkhize	Joel Mbhekiseni	-Murder -2 counts of attempted murder -Unlawful possession of two machines rifles	23/01/1999	Richmond	19/10/2000	High Court, Pietermaritzburg	CC84/99

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
			-Theft of a motor vehicle -Unlawful possession of a firearm -Unlawful possession of ammunition					
71.	Mkhize	Lennox Mpumelelo	-Armed robbery -Robbery -Escape from lawful custody	29/03/1993 02/04/1993	Port Elizabeth	04/08/1994 05/01/1995	Regional Court, Port Elizabeth	SH1/147/93
72.	Mkhonza	Dennis Thonto Sipho Mhlupheki	-Murder -6 counts of attempted murder -Robbery with Aggravating circumstances -Unlawful possession of ammunition -Unlawful possession of firearm	23/03/1996	Not provided	12/11/1997	Circuit Court, Delmas	CC244/96
73.	Mkutswana	Maxson Similo	-Murder -Housebreaking -Theft -Malicious damage to property -Unlawful possession of firearm & ammunition	-/03/1995	Diepkloof	06/03/1998	High Court, Johannesburg	CC97/2005
74.	Mncube	Bhekekhaya Elias	2 counts of murder	25/09/1995	Impendle	29/05/1997	High Court, Pietermaritzburg	CC12/97
75.	Mncube	Lamlani Alson	-4 counts of murder -4 counts of armed robbery	25/09/1995	Impendle	14/11/1996	High Court, Pietermaritzburg	CC22/96
76.	Mncube	Elphas Tholindawo	-2 counts of murder -Attempted murder	24/09/1995	Polela	14/11/1996	High Court, Pietermaritzburg	CC22/96
77.	Mngadi	Khombeyakhe Howard	-2 counts of murder -Escape from lawful custody	20/03/1994	Richmond	07/06/1996	High Court, Pietermaritzburg	CC40/96 F553/96
78.	Mnqayi	Khululekani Moses	-Murder -Attempted murder	08/05/1997	Esikhawini	19/10/1998	High Court, Mthunzini	CC145/98
79.	Mntungwa	Sipho Edward	-11 counts of murder -6 counts of attempted murder	23/01/1999	Richmond	13/08/2001	High Court, Pietermaritzburg	CC87/2000

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/ sentence	Court convicted	Case number
80.	Mofokeng	Richard Thapelo	-4 counts of robbery -Attempted robbery -Murder -Unlawful possession of an automatic rifle	04/03/1994 01/04/1994 15/06/1994 28/01/1994	Malbarton, Alberton Boksburg Kiblerpark Glenvista	25/02/1999	High Court, Johannesburg	CC335/97
81.	Mogudi	Raditshukudu Nelson	2 counts of arson	-/09/1998	Tsakane	09/03/2006	High Court, Johannesburg	A2180/2003
82.	Molelekeng	Basimane David	High treason	10/02/1998	Bophuthatswana	18/12/1998	Bosele Supreme Court	Not provided
83.	Motsemme	Henry	2 counts of robbery	-/08/1992	Tygervalley	11/12/1996 11/03/1997	Regional Court, Parow – Regional Court, Bellville	Not provided
84.	Mphambane	Sikhumbuzo Victor	Murder	27/04/1993	Gobozana	28/02/1995	High Court, Bisho	Not provided
85.	Mphaga (Mphanga)	Thabo Gregory	Murder	20/07/1996	Temba	21/05/1998	High Court, Mmabatho	CC82/97
86.	Mpinda	Thandile	-5 counts of Armed Robbery -Possession of unlicensed firearm -Escape from lawful custody	12/05/1995 06/02/1997	Mdantsane	10/10/1996 18/02/1999	Regional Court, Mdantsane	CC526/95 CC176/97
87.	Mpoae	Solomon Tebogo	-3 counts of murder -Robbery	04/06/1997	Kuruman	17/09/1998	High Court, Mmabatho	CC58/98
88.	Mshengu	Dumisani Solomon	Murder	26/09/1995	Pietermaritzburg	10/07/2005	High Court, Pietermaritzburg	CC56/2003
89.	Msibi	Muzi Thomas	-Murder -5 counts of attempted murder	28/04/1994	Johannesburg	28/07/1998	High Court, Johannesburg	CC425/03/94
90.	Msomi	Sibusiso	-2 counts of robbery -3 counts of murder -2 counts of unlawful possession of firearm -2 counts of unlawful possession of ammunition -Attempted armed robbery -Attempted murder	28/02/1994 04/09/1995	Pretoria Taung	07/05/1997 18/03/1998	High Court, Pretoria High Court, Kimberley	CC48/97 KS12/96
91.	Mthembu	Wilton Bongani	-3 counts of murder	07/04/1997	Shobashobane	15/12/1998	Circuit Court, Port	CC100/98

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
			-Escaping from lawful custody	15/05/1998	Izingolweni	26/08/1998	Shepstone Izingolweni Court	CC170/98
92.	Mtolo	Sipho Lewlight	-8 counts of murder -6 counts of attempted murder	01/07/1993	Richmond	10/05/2002	High Court, Durban	CC134/00
93.	Mtshemla	Richard	-Unlawful possession of an automatic rifle -Unlawful possession of ammunition	Not provided	Rotunda Location, Heidelberg	Not provided	Not provided	Not provided
94.	Mutle	Ronald Duke Thuso	-Murder -Unlawful possession of firearm -Unlawful possession of ammunition	20/07/1996	Themba	21/05/1998	High Court, Mmabatho	CC82/97/265-7-96
95.	Myburgh	Abraham Liebrecht	-4 counts of murder -3 counts of attempted murder -2 counts of malicious damage to property -2 counts of Possession of explosives -Sabotage/Terrorism -Possession of firearms and explosives -Escape from lawful custody -Theft	24-27/04/1994 1995 24/12/1996	Johannesburg, Pretoria, Germiston, Diepkloof, Worcester, Cape Town	07/02/1997 18/04/1997 23/10/1997	High Court, Johannesburg Regional Court, Johannesburg High Court, Western Cape	CC64/94 CC41/35/97 SS/31/97
96.	Ndlovu	Dumisani Emmanuel	-3 counts of murder -3 counts of attempted murder	17/03/1996	Richmond	10/03/1998	High Court, Pietermaritzburg	CC53/97
97.	Ndlovu	Mthokozisi Ntoko	-Murder -Unlawful possession of firearm & ammunition	01/02/1995	Chesterville	06/12/1995 28/10/1996	Regional Court, Durban High Court, Durban	CC41/5258/95 CC147/95
98.	Ndlovu	Nkosinathi Paul	2 counts of murder	14/02/1999	Richmond	11/09/2001	High Court, Pietermaritzburg	CC115/2000
99.	Ndlovu	Sikhumbuzo Patrick	-3 counts of murder -3 counts of attempted murder	Not provided	Richmond	11/03/1998	High Court, Pietermaritzburg	CC53/97
100.	Nene	David Zibuseleni	-Murder -4 counts of attempted murder	15/07/1991	Stillfontein Mines	03/05/1994	High Court, Johannesburg	CC254/94

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
			-Robbery					
101.	Netshikweta	Ntshengedzeni Summerscle	Unlawful possession of firearm	07/03/1994	Pafuri	29/08/1997	Regional Court, Polokwane	SK313/94
102.	Ngcobo	Hopewell Themba	-Murder -3 counts of attempted murder -Arson	01/06/1990	Ndwedwe	23/11/2001	High Court, Durban	CC83/01
103.	Ngcukana	Toko Maria	Unlawful possession of firearm	Not provided	Roodepoort	-/09/1993	Magistrates' Court, Roodepoort	Not provided
104.	Ngomane	Sipho Bamabas	-2 counts of murder -Robbery -Use of a motor vehicle without permission	04/09/1995	Taung Hartswater	23/09/1999	High Court, Kimberley	KS7/98
105.	Ngubane	Herman Lee	-3 counts of murder -3 counts of attempted murder	17/03/1996	Richmond	11/03/1998	High Court, Pietermaritzburg	CC53/97
106.	Ngubane	Mzokhona Ambrose	-Murder -Unlawful possession of firearm and ammunition	31/07/1995	Bothashill	12/11/1997	High Court, Durban	CC1/97
107.	Ngubo	Bhekani Russel	-2 counts of murder -Kidnapping	13/09/1995 26/09/1995	Impendle Pietermaritzburg	10/07/2005	High Court, Pietermaritzburg	CC56/2003
108.	Ngwenya	Paul	Unlawful possession of explosives	30/07/1986	Welkom	29/10/1987	Regional Court, Bloemfontein	B392/87
109.	Nhlumayo	Themba Thulani	-8 counts of murder -attempted murder -robbery with aggravating circumstances -8 counts of possession of firearms and ammunition.	24/12/1998	Margate	01/01/1998	High Court, Durban	CC72/99
110.	Njingolo	Luthando Arthur	Murder	27/01/1999	Kentane Kwabakazi	19/06/2002	High Court, Mthatha	CC90/2000
111.	Nkabinde	Blessing Vulindlela	-19 Murder -13 counts of attempted murder	23/01/1999 03/07/1999	Richmond	23/11/2000 13/08/2001	High Court, Pietermaritzburg	CC87/00 CC116/00
112.	Nkabinde	Bongani Derrick	-11 counts of murder -6 counts of attempted murder	23/01/1999	Richmond	13/08/2001	High Court, Pietermaritzburg	CC87/00
113.	Nkhumeleni	Edward Ndwakhulu	Murder	-/05-06/1994	Lukau	07/03/1995	High Court, Thohoyandou	CC17/94

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
114.	Nkonyeni	Nhlanhla Dennis	Public violence	1997	Izingolweni	December 1999	Regional Court, Harding	Not provided
115.	Nkosana	Mzoxolo Wiseman	-2 counts of murder -2 counts of robbery -Unlawful possession of firearms -Unlawful possession of ammunition	05/06/1993 11/04/1994	Port Elizabeth	22/06/1996 10/08/1999	High Court, Port Elizabeth	CC13/93 CC41/94
116.	Ntshangase	Mika Mphiliseni	Murder	02/06/1999	Not provided	08/06/2001	High Court, Pietermaritzburg	CC133/00
117.	Ntuli	Mthokozisi Innocent	-3 counts of murder -3 counts of attempted murder	17/03/1996	Richmond	20/10/1998	High Court, Pietermaritzburg	CC81/98
118.	Ntuli	Musa Solomon	-Murder -2 counts of unlawful possession of firearm & ammunition	08/09/1996	Kwathema	03/12/1997 23/02/1998	Circuit Court, Delmas	CC121/97
119.	Nxumalo	Masenti Themba	-Murder -4 counts of attempted murder -Kidnapping -Armed robbery -2 counts of unlawful possession of firearms and ammunition	21/11/1995	Izingolweni Harding	30/01/1998	Circuit Court, Kokstad	CC91/97
120.	Nyembe	Makhosini Clement Johannes	Malicious damage to property	07/11/1988	Soweto	21/11/1988	Protea Court	CC141/11/1988
121.	Nzimande	Mbongeni Emmanuel	-3 counts of murder -3 counts of attempted murder	17/03/1996	Richmond	01/03/1998	High Court, Pietermaritzburg	CC53/97
122.	Otto	Gert Jacobus Louis Hosea	Attempted murder	23/04/1989	Kempton Park	17/08/2007	High Court, Pretoria	Not provided
123.	Phungula	Mbidli Phumlani	-8 counts of murder -6 counts of attempted murder	01/07/1993	Phatheni	10/05/2002	High Court, Durban	CC134/00
124.	Rossouw	Reyno Andriaan	-Culpable homicide -Public violence	31/08/1995	Kuruman	12/01/2005	Regional Court, Kathu	KRC/37/99
125.	Macamero	Fernando Sebastian Jamario	-10 counts of illegal possession of firearm and ammunition	10/07/1994	Mkhuze	15/12/1995	Regional Court, Durban	CC41/2695/94

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
126.	Sehlapelo	Martin Collin Abner Mmapeteke	Terrorism	1985 – 1987	Polokwane	25/08/1989	Regional Court, Pietersburg	Not provided
127.	Shabane	Siphiwe James	-Murder -2 counts of attempted murder -Unlawful possession of two machine rifles -Theft	10/08/1998 23/01/1999 25/01/1999	Richmond	18/10/2000	High Court, Pietermaritzburg	CC84/99
128.	Shange	Richard Khethani	-Murder -3 counts of attempted murder -Trespassing -Common assault -Malicious damage to property -Pointing of firearm	07-08/04/1990 17/11/1993	KwaMashu Newcastle	29/05/1991 02/07/2001	High Court, Durban Magistrates' Court, Newcastle	A1525/93 (Newcastle)
129.	Sibiya	Siphamandla Emmanuel	-2 counts of murder -3 counts of attempted murder -Arson	15/03/1999	Nhlazatshe	29/11/2002	High Court, Pietermaritzburg	CC51/01
130.	Sima	Terrence Bhkizizwe	-Murder -2 counts of attempted murder	1998	Mvutshini Kwaxolo	01/03/2001	High Court, Pietermaritzburg	CC131/00
131.	Smith	Christoffel Lodewikus	Attempted murder	23/04/1989	Kempton Park	17/08/2007	High Court, Pretoria	Not provided
132.	Stephens	Maureen	-Perjury -Entering a Black area -Kidnapping	1972 1969 1993	Newlands Springs Kagiso	Not provided	Newlands Springs Krugersdorp	S10793 (Kagiso)
133.	Swanepoel	Marius Jan	-2 counts of Housebreaking -2 counts of robbery -2 counts of murder -2 counts of stock theft	-/06/1998	Tempe, Bloemfontein	25/07/2001	High Court, Bloemfontein	CC11/2000
134.	Taljaardt	Gerhardus Johannes	-Public violence -Culpable homicide	31/08/1995	Kuruman	12/01/2005	Regional Court, Kathu	KRC37/1999
135.	Thusi	Siyabonga Obed	-Murder -Robbery with Aggravating circumstances	25/07/1997	Durban	07/11/2006	High Court, Durban	CC3/97
136.	Tshona	Marshall	2 counts of murder	13/06/1992	King William's Town	29/09/1995	High Court, King William's Town	CC19/95

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
137.	Van Der Merwe	Johannes Velde	Attempted Murder	23/04/1989	Kempton Park	17/08/2007	High Court, Pretoria	Not provided
138.	Van Der Westhuizen	Johannes Benjamin	-4 counts of murder -3 counts of attempted murder -2 counts of malicious damage of property -3 counts of sabotage -Possession of explosive devices -Possession of weapons and ammunition -Theft	24/12/1996 25/10/1996 09/1996-01/1997 15-18/10/1996	Worcester	23/10/1997	High Court, Western Cape	SS31/97
139.	Van Staden	Hermanus Johannes	Attempted murder	23/04/1989	Kempton Park	17/08/2007	High Court, Pretoria	Not provided
140.	Vapi	Clarence Bonginkosi	-2 counts of murder -Robbery	15/11/1993 21/11/1993	Gamalakhe Kwanositha	18/02/1998 20/04/2000	High Court, Pietermaritzburg Regional Court, Port Shepstone	CC8/98 RC22/2000
141.	Vena	Xolisile	-2 counts of murder -Attempted murder -2 counts of possession of unlicensed firearm and ammunition	-/03/1999 -/11/1997	Mdantsane	12/06/2000 -/06/2001	High Court, Bisho Regional Court, Mdantsane	CC15/2000 RCM12610
142.	Vlok	Andriaan Johannes	Attempted Murder	23/04/1989	Kempton Park	17/08/2007	High Court, Pretoria	Not provided
143.	Wessels	Hans Jacob	-Public violence -Culpable homicide	31/08/1995	Kuruman	12/01/2005	Regional Court, Kathu	KRC37/1999
144.	Whitehead	Alexander George	-Public violence -Culpable homicide	31/08/1995	Kuruman	12/01/2005	Regional Court, Kathu	KRC37/1999
145.	Williams	Eric	-Murder -Attempted murder -Robbery -Unlawful possession of firearm & ammunition -Theft of motor vehicle	15/07/1991	Stilfontein Mines	03/05/1994	High Court, Johannesburg	CC254/92
146.	Zakuza	Mbukeni Innocent	-10 counts of murder -2 counts of attempted	02/04/1994 03/1994	eMavundlani Umzumbe	03/04/1998 05/06/1998	Circuit Court, Port Shepstone	CC10497; CC12197

No	Surname of applicant	Full names of applicant (offender)	Offences for which pardon is requested (applied)	Date of offence	Place where offence was committed	Date of conviction/sentence	Court convicted	Case number
			murder				Circuit Court, Scottsburg	
147.	Zikhali	Mphikeledi Nelson	-Murder -Assault GBH	23/05/1994	Mbazwana	02/09/2002	Regional Court, Mthubathuba	Not provided
148.	Zuma	Mfiki Ian	-8 counts of murder -6 counts of attempted murder	01/07/93	Phatheni	20/12/2001	High Court, Pietermaritzburg	CC134/00
149.	Zwane Socenywa	Thulani Innocent	-Murder -Attempted murder -Culpable homicide -Unlawful possession of firearm & ammunition -Housebreaking and robbery	25/03/1995 29/03/1995 07/04/1995	KwaThema	13/01/1998 16/09/1996	Regional Court, Delmas Regional Court, Springs	CC135/1996 SH1025/1995

SPECIAL DISPENSATION FOR ALLEGED POLITICAL OFFENCES
MEMORANDUM ON FINAL REPORT OF THE PARDONS REFERENCE GROUP TO
THE PRESIDENT
SOUTH AFRICAN COALITION FOR TRANSITIONAL JUSTICE

INTRODUCTION

1. These are the preliminary observations of the South African History Archives, the Human Rights Media Centre, and the Centre for the Study of Violence and Reconciliation, the Institute for Justice and Reconciliation, the Trauma Centre and the International Center for Transitional Justice in respect of the final report submitted by the Pardons Reference Group (RG) to the President. Since all the aforementioned organisations are associated with South African Coalition for Transitional Justice (SACTJ) they will be referred to as the “Coalition”.
2. A consideration of the Final Report of the RG, as well as other documents provided by the Chief Directorate: Legal Services, Department of Justice and Constitutional Development (DoJ) in relation to the Special Dispensation on Political Pardons, and in particular the process and procedure adopted by the RG, reveals why the RG and the DoJ were so reluctant to release this information. The paperwork discloses that the process adopted was utterly irrational and the submissions made to the President were wholly unreliable.

Background

3. In 2007 former President Mbeki established a special dispensation to process applications for pardons by offenders who claimed their offences were politically motivated. He said this was necessary to “*complete the unfinished business of the TRC*” and declared that the process would comply with the principles and values of the TRC. President Mbeki established a Reference Group comprised of political party representatives to make recommendations to him.
4. The RG however refused to allow victims and the public access to their information. They also did not permit victims to participate in the process or make representations to them. In 2009 seven civil society organisations (now known as the South African Coalition for Transitional Justice) approached the High Court in Pretoria and obtained an interdict against Acting President Kgalema Motlanthe from granting such political pardons without seeking the views of victims and

interested parties. The Constitutional Court subsequently ruled that victims had a right to be heard in this process.

5. As a result the Department of Justice embarked upon a process to provide victims an opportunity to make representations and published a notice to this effect in several newspapers. It set out the names of 149 offenders who have been recommended for pardon, as well as the crimes for which they sought pardon, the places where the offences were committed, the dates of the crimes, the dates of convictions and sentences, the convicting courts and case numbers.
6. Victims and interested parties were required to notify the Pardons Secretariat based at the DoJ of their intention to make representations within 30 days of the publication of the notices in the press. The notice was published in the government gazette on 15 October 2010; in various newspapers on 15 and 19 October 2012 and other newspapers on unknown dates. No firm cut-off date for the delivery of notifying letters was supplied by the DoJ. The notice stated that “the Secretariat will respond to communications received within 30 days” and that interested parties will then have 30 days in which to lodge “substantiated and detailed representations” with the Secretariat.
7. None of the documents released by the DoJ disclose any attempt to reach out to specific victims associated with the cases recommended for pardon. Aside from publishing a list of the pardon applicants recommended for pardon no effort was made to make direct contact with the affected victims, even in cases when it was apparent that victims had little chance of being notified through such publications.

Letters of interest

8. The Coalition members requested that they needed the following information to place them “*in a proper position to make representations to the President*”:
 - 8.1. Copies of the application forms as submitted by the applicants;
 - 8.2. Copies of any document considered by the Reference Group and/ or President;
 - 8.3. Copy of the Reference Group's reasons for recommending the applicants for pardons;
 - 8.4. The record in respect of the voting on the recommendations for pardon.
9. The Coalition members advised that they needed such information in order to:

- 9.1. make informed and proper representations;
- 9.2. consider whether the disclosures made by the applicants constitute full and proper disclosure in the circumstances;
- 9.3. consider claims that the crimes in question were of a political nature or motivated by a political objective;
- 9.4. comment on any factual, mitigating or other circumstance as alleged by the perpetrator, and where necessary rebut such factual allegations;
- 9.5. comment on any motivations set out by perpetrator as to why a pardon is appropriate in his case, and where necessary counter such motivations;
- 9.6. consider the reasoning of the Reference Group behind the recommendation for a pardon and make representations as to the appropriateness and correctness thereof.

Documents received

- 10. Towards the end of January 2012 various Coalition members received a letter dated 16 January 2012 from Ms. J A Nieuwoudt, the Legal Administration Officer of the Department of Justice and Constitutional Development (DoJ). The letter included copies of various documents in relation to certain special pardon applications.
- 11. The documents supplied included:
 - 11.1. A copy of the January 2009 final report of the Reference Group (RG);
 - 11.2. Copies of the reports to the President in respect of the relevant pardon applicants;
 - 11.3. Copies of the letters signed by Dr J T Delport, Chairperson of the RG, setting out the RG's recommendations;
 - 11.4. Copies of the application forms of the pardon applicants (contact details omitted).

Missing documents

- 12. We point out that these submissions are, of necessity, preliminary representations as the documentation supplied by the Chief Directorate: Legal Services is incomplete.
- 13. On behalf of the Coalition the Legal Resources Centre (LRC) addressed a letter to the Department of Justice and Constitutional Development ("DoJ") on 15 February

2012 in which it was pointed out that the self imposed 30 day deadline was unreasonable in the circumstances. The LRC also listed various documents that were missing from the bundles supplied to the Coalition members. The LRC proposed that the Coalition be given a period of 60 days from the date of receipt of such materials to make representations.

14. The Head of the Secretariat at the DoJ, Mr. P J J Heyns, responded by way of a letter dated 7 March 2012, which was received by the LRC on 14 March 2012. Attached to this letter was certain of the information requested. Most of the judgments pertaining to the applicants remain outstanding as well as any further information considered by the RG in making their recommendations in relation to the cited applicants. In the absence of any confirmation that the documents received constitute the entire record of these applications, our clients continue to await the outstanding documents and require 60 days from the date of receipt of the outstanding documents in order to submit their submissions. In this regard see the letter dated 19 April 2012 addressed by the Legal Resources Centre to the Head of the Secretariat, Chief Directorate: Legal Services, DoJ.

Delay of more than 13 months

15. The DoJ letter was in response to written requests made by the abovementioned organisations during November 2010 to the Head of the Secretariat (established to facilitate representations by interested members of the public) for relevant information. The DoJ letter states that any representations must be submitted within 30 days of the date of the letter.
16. It should be recalled that the Coalition member organisations requested that the relevant documents be supplied “*as a matter of urgency*” to enable them “*to respond within the time periods set out*”. They added that if “*delay is caused by the non-delivery of the requested documents, we may require more time than that currently proposed in the notice*”.
17. In terms of the deadlines imposed by the DoJ it ought to have responded to the requests submitted by Coalition members before the end of December 2010. The DoJ is accordingly more than 13 months late. During this time, and notwithstanding queries and reminders, the DoJ never indicated when it would respond and offered no explanation for its long delay. In the circumstances the Coalition, as well as others who wished to make representations, were entitled to assume that the DoJ had abandoned the Special Dispensation and that the entire process had lapsed.

18. In the circumstances the threat by the DoJ to re-impose the deadlines that it so flagrantly disrespected – and “*ignore*” late representations is wholly unreasonable.

Initial refusal to disclose information

19. It should be noted that the DoJ, aside from being responsible for the long delay described above, played its role in obstructing access to relevant documentation to victims and interested parties. It initially declined to disclose any information, including the application forms, notwithstanding that their disclosure was so patently necessary for purposes of making meaningful representations.
- 19.1. On 19 October 2010, the Legal Resources Centre (LRC), representing the Coalition sent a letter to State Attorney, representing the DoJ and the President. In this letter the LRC requested the State Attorney to, *inter alia*, provide the information submitted by the RG to the President.
- 19.2. On 22 October 2010, the State Attorney responded to the LRC and declined to provide the information requested.
- 19.3. On 28 October 2010, the LRC sent a letter to the State Attorney advising that the Coalition members were entitled to consider the information that prompted the RG to recommend the 149 persons for pardon and that any refusal to provide same was unreasonable and unlawful. The LRC sent an email to the State Attorney on 3 December 2010 requesting a response to its 28 October 2010 letter. The LRC received no response.
- 19.4. On 27 October 2010, the South African History Archives (SAHA) submitted a request under the Promotion of Access to Information Act, 2000 (PAIA) to the Department of Justice and Constitutional Development seeking information in relation to applicants made for special pardon. The following information was sought:
- 19.4.1. copies of the following records in relation to each of the 149 persons recommended for a special pardon and published in the press by the Department of Justice and Constitutional Development on 18 October 2010:
- 19.4.1.1. the application for pardon submitted by each applicant;

- 19.4.1.2. any documents considered by the PRG that was used to inform the recommendations made to the President in relation to the application for pardon by each applicant;
 - 19.4.1.3. any documents considered or to be considered by the President in relation to the application for pardon by each applicant;
 - 19.4.1.4. any documents that make reference to the PRG's reasons for recommending each of the applicants for pardon; and
 - 19.4.1.5. the record in respect of the voting on the recommendation for pardon of each applicant.
- 19.5. On 14 December 2010, the DoJ responded to the request and denied it on the basis of s 44(1)(b)(i)¹ of the PAIA, claiming that disclosure of the requested documents could “*frustrate the deliberative process within government departments in exercise of their public function.*”
- 19.6. SAHA lodged an internal appeal in terms of s 75 of PAIA on 7 March 2011. In accordance with s 77(3)(a) of PAIA, the DoJ was required to respond to the internal appeal within thirty days. On 6 May 2011 SAHA wrote to the DoJ advising that the Department had failed to respond within the statutory time. No response was received by SAHA. In terms of s 77(7) of PAIA, the failure of the DoJ to respond to the internal appeal within the statutory time period constitutes a dismissal of the appeal.
- 19.7. It appears that by January 2012 the DoJ no longer felt that the disclosure of the information would “*frustrate the deliberative process within government departments*”.

THE RG'S FINAL REPORT TO THE PRESIDENT

20. The RG's final report is a highly selective account of the RG's work and its chosen methods and procedures. Several of the assumptions and claims made by the RG in its final report are either wrong or simply false.

¹ Section 44(1)(b)(i) reads: “The disclosure of the record could reasonably be expected to frustrate the deliberative process in a public body or between public bodies by inhibiting the candid- (aa) communication of an opinion, advice, report or recommendation; or (bb) conduct of a consultation, discussion.”

Full disclosure

21. The Special Dispensation on Political Pardons was meant to complete the “*unfinished business*” of the Truth and Reconciliation Commission (“TRC”). The fundamental premise of the TRC was the establishment of the truth. Central to the amnesty process was the requirement of full disclosure. Indeed one of the reasons why the Constitutional Court upheld the TRC’s amnesty was because it was premised on the full disclosure of the truth.² The truth requirement in the special pardons process was also upheld by the Constitutional Court in *Albutt* as a fundamental precondition.³ In developing its own criteria, the RG confirmed its commitment to shape these in line with the amnesty process as defined by the TRC.⁴ Inexplicably, however, the RG chose to completely exclude full disclosure from their criteria.⁵ **This startling omission renders the various reports of the RG to be hopelessly unreliable.** The approach of the RG emboldened pardon applicants to disclose little or no real truth. An example of such an application was that of the former Minister of Police, Adriaan Vlok, and Commissioner of Police, Johann van der Merwe. Their applications are noteworthy for the almost total absence of relevant facts. They and others should be given the opportunity of disclosing the full truth before any further processing of their applications. A memorandum analyzing this application and its treatment by the RG is attached.
22. It appears that in the cases recommended for pardon the RG assumed that everything told to them was the truth. Establishing the truth and the making of full disclosure was the fundamental premise of the TRC’s amnesty process. No requirement was imposed by the RG on pardon applicants to make full disclosure for purposes of building the truth of past conflicts for the nation’s benefit; and for purposes of promoting national reconciliation. Indeed full disclosure of the facts was specifically excluded as a criterion.
23. The Chairperson of the RG, Dr J T Delport, an erstwhile colleague of the pardon applicants in the Chikane matter (he served as a Deputy Minister of Provincial Affairs during the Apartheid regime), specifically excised truth as a criterion for a pardon recommendation. In a report to the President dated 21 April 2008 he

² *Azanian Peoples Organisation (AZAPO) & Ors v. President of the Republic of South Africa & Ors*; (CCT17/96) 1996 (8) BCLR 1015; 1996 (4) SA 672; [1996] ZACC 16 (25 July 1996); at par 17, -18

³ *Albutt v Centre for the Study of Violence & Reconciliation* 2010 (3) SA 293 (CC) at par 59 – 61, 65, 67 and 70 – 72.

⁴ Final Report p 4.

⁵ At p 4 of the Final Report.

asserted that “*the full disclosure*” requirement (*the requirement which was the cause of the failure in most instances*), is surely not a critical element any more”. Astonishingly the Department of Justice agreed and responded by saying that it was “*not necessary*” for a pardon applicant to identify any person “*who gave command*”. The political party could “*simply confirm*”.⁶ **Establishing the truth ought to have been a central condition of the process. The instruction that the full truth not be disclosed rendered the entire process unlawful.**

24. Notwithstanding the claim of Dr Delport that “*full disclosure*” could “*surely*” not be “*a critical element*” he then **contradicted** himself in his 2009 final report by stating that full disclosure was in fact an important element of the process. At paragraph 10.2 he stated that there are many other incidents that ought to be considered (requiring the expansion of the mandate of the RG) “*if full disclosure is to be achieved*”.
25. Clearly full disclosure had to play a role in the deliberations of the RG. Notwithstanding the claim of Dr Delport that full disclosure was not a critical element, it nonetheless recommended pardon in some cases, such as that of Worcester bomber, Mr. Johannes Benjamin Van Der Westhuizen, on the basis that “*the Applicant submitted a comprehensive application wherein a full disclosure is made...*” In respect of this application it was noted that the identities of those “*who gave instructions*” to the applicants were known. In respect of the Chikane matter, the RG makes no mention of “*full disclosure*” at all. No effort was made to require the applicants in that matter to disclose ‘who gave instructions’, given their claim that they were merely passing on “*messages*”. It seemed that the criterion of ‘full disclosure’ was applied selectively, inconsistently or not at all. **This fact renders the recommendations of the RG wholly unreliable.**

Leniency to perpetrators in post-transitional South Africa

26. The suspension of the rule of law through the truth for amnesty formula in the mid 1990s was largely aimed at safeguarding South Africa’s emerging and fragile constitutional democracy. More than 15 years later attempts to circumnavigate the rule of law can no longer be a case of “*bartering justice for the future of constitutional democracy*” it is rather for the sake of “*convenience*” or other reason.⁷ Moreover it is not a matter of “*suspending the rule of law in order to*

⁶ See annex J of the PAIA documentation.

⁷ Jonny Steinberg, *Amnesty Quandary Looms for Judges*, BUSINESS DAY, June 8, 1999.

*protect [South Africa's] posterity; its posterity is already as sure as it can be".⁸ Any new leniency ought to require a **more compelling justification**. The benefits of such measures should accordingly be commensurably higher than the benefits that accrued under the actual transition.⁹*

- 26.1. The real benefit to society is that of **truth recovery**. Any new leniency, be it in the form of a special pardon or other measure, needs to meet a higher standard in relation to truth. Accordingly a non-transitional truth-for-leniency measure needs to meet a higher level of disclosure in order to adequately compensate the erosion of the rights of victims and the wider public.
- 26.2. At the very minimum, such truth ought to include all relevant facts relating to the offence in question, including what gave rise to the crime. Such truth should include the identities of the masterminds as well as those who made such violations possible through logistical support and after-the-fact cover ups. However, in post-transitional South Africa victims and the public are entitled to a **greater contextual truth**. This should include all relevant details going back to the genesis of the crimes; as well as details of other serious human rights violations committed by the applicants, and other serious violations of which they have direct knowledge.
- 26.3. Secondly there should be no retreat from the **protections, checks and balances** previously provided for in the TRC process. Aside from full disclosure; these included an independent and impartial adjudication of the proportionate association of acts to political objectives; transparency and openness; victims' rights of participation; and a right to reparations.¹⁰ **The Special Dispensation on Political Pardons fails on all counts.**

Other substantive shortcomings

27. While the RG criteria enjoined it to consider the motive of the offender, the nature of the political objective and the relationship between the offence and the objective pursued, the RG **carried out no such inquiries or analysis**. Accordingly, it was also able to recommend pardon in the case of serial killers who murdered an entire

⁸ *Id.*

⁹ Jon Klaaren & Howard Varney, *A Second Bite at the Amnesty Cherry? Constitutional and Policy Issues*, 3 S. AFR. L.J. (Nov. 2000) (republished with a postscript in *THE PROVOCATIONS OF AMNESTY* (Charles Villavicencio & Erik Doxtader eds., 2003).

¹⁰ Klaaren & Varney, *supra* note 53, at 588-89.

family, including a 5-month-old baby, in the interest of a so-called political objective in April 1994.¹¹ In doing so it gave no consideration to the nature of the crime, and its relationship to the so called political objective pursued.

28. The RG even ignored its own findings when making recommendations. In the cases dealing with the Richmond massacres the RG in its report titled “*Political Background – ANC and UDM inter-party political violence*” described such offences as acts of “*unspeakable brutality*”¹². The RG also noted that such crimes “*by far exceed the parameters of political*”¹³. Nonetheless the RG went ahead and recommended pardons in these cases. Such recommendations are manifestly irrational and are yet further indication that none of the conclusions and recommendations of the RG may be relied upon.
29. In various cases it held that a mere endorsement by a political party was sufficient proof that the offence in question was political in nature. Even in cases where no factual evidence sustaining the alleged political activity was provided by either the applicant or the political party, and where the objective circumstances of the crime made a political motivation highly unlikely, the RG still recommended a pardon on the grounds that the political party in question had endorsed the application.¹⁴
30. While the RG purported to analyse the ‘facts and circumstances of each individual case’ they glossed over the distinction between **pre-1994** and **post-1994** incidents. Given the fact that there is no prima facie justification for resorting to violence and unlawfulness in a constitutional democracy, it is quite remarkable that they neglected to deliberate on the justifiability or proportionality of post-1994 crimes.. This is yet another indication of how the RG failed utterly to apply its mind to its own set of criteria, as incomplete as they were.

Procedural flaws

31. The RG admits in its report that “*in a number of cases the application could succeed on the word of the applicant alone*” although “*extreme caution was exercised*” in such cases. It was not revealed in which cases the word of the

¹¹ Application of Sifiso Eric Cele, Qalokwakhe Lawrence Gumede, Simon Magalane Khawula, Mbukeni Innocent Zakuza. Their court case served in a Circuit Court in Port Shepstone, CC104/97..

¹² Application of Simanga Emmanuel Dlamini, Mbongeni Mjwara, Nkosinathi Paul Ndlovu, Blessing Vulindlela Nkabinde and Derrick Bongani Nkabinde, High Court Pmb, CC53/9.7 Reference Group Recommendation. Political background – ANC and UDM inter-party political violence, p. 3.

¹³ Ibid.

¹⁴ See recommendation for AP Godolozzi.

applicants alone was relied upon. It was not stated what actual ‘extreme caution’ was in fact exercised.

32. In line with this **blinkered approach** was the secret procedure adopted by the RG which excluded any possibility of the alleged facts being tested by anyone with independent knowledge of the relevant facts. Nobody was in a position to test the truthfulness of claims made or to consider whether the alleged offences were in fact politically motivated or not, amongst other questions. The Constitutional Court held in the *Albutt* matter that this shortcoming was in violation of the rule of law.
33. The RG claimed that it “*required confirmation of or other information about the facts presented by the Applicant*”. Such confirmation or corroboration was apparently secured through “*in most cases obtain[ing] the judgment*”. It is not stated what confirmation occurred in other cases. Confirmation was also made “*by the political party of the applicant*” apparently acting with “*restraint and responsibility*”.¹⁵ If these procedures were meant to verify facts such verification cannot be taken seriously.
 - 33.1. **Court judgments** are not required to expose the full truth. Judgments in criminal cases do no more than determine whether the narrow elements of specific crimes have been proved beyond a reasonable doubt or not. Judgments will not necessarily disclose a particular political objective nor will it necessarily disclose who was ultimately responsible (the masterminds), or reveal the nature of their roles, if such persons were not accused. Where convictions were secured on the basis of a plea and sentence agreement even less facts are disclosed – and indeed there is no interrogation of the facts. Aside from the fact that judgments do not always disclose political motivations; it is now apparent from the Coalition’s own investigations that the RG did not even have access to judgments in most cases in which pardon was recommended.
 - 33.2. Since 13 February 2012 members of the Coalition have approached 10 court registrars seeking copies of 48 judgments in 79 cases in which special pardon had been recommended, Notwithstanding these efforts the Coalition has been unable to locate any of the judgments handed down in the High Courts of Pietermaritzburg, Pretoria, Bisho, Mmabatho, Johannesburg, Umtata or any of the judgments handed down in the

¹⁵ In the case of Godolozzi no verification of specific facts were provided and the applicant’s own account provided few details. However the RG did not require any further confirmation of the allegations. There is no indication that the judgment was consulted or even sought by the RG in this instance.

Magistrate's, Regional or Circuit courts. In total, the judgments in relation to only 13 of the special pardon applicants could be traced. The reasons for the unavailability of the judgments included the destruction of the judgments¹⁶ or the fact that the judgments were not transcribed in the first place. It is likely that, notwithstanding the claim of the RG, very few judgments were available for "corroboration". It is also possible that the RG did not even request these particular judgments.

- 33.3. The claim that political parties provided '*confirmation*' of the facts is even less believable. The RG relied upon so-called corroboration from the very party endorsing the application for pardon. Such 'confirmation' has to be assessed in the light of the obvious predisposition and bias of such parties. **Any such 'corroboration' is clearly tainted and cannot be relied upon.**
- 33.4. Notwithstanding the requirement that political parties had to endorse pardon applications, it is to be noted that several applications that were recommended for pardon were not accompanied by such endorsements.
- 33.5. In some cases the political party affidavit confirms membership of the party but is silent on the offence in question. **Confirmation of membership does not stand as confirmation that the offence was politically motivated or authorised by the organisation.**
- 33.6. In other cases the offence in question is not endorsed by any entity. In yet other cases affidavits are put up by party functionaries merely alleging that the offences in question were "related to the political conflict". **Such affidavits do not constitute endorsement of political motivation.**

Categories

34. The RG divided the applications into different categories:

- 34.1. offences before 1994;
- 34.2. political offences post 1994;
- 34.2.1. PAGAD

¹⁶ The registrars in Rustenberg and Mmabatho advised that in two cases (concerning five applicants) the judgments' were destroyed. A full list of cases in which judgments are destroyed, or unavailable for their reasons, is attached to this memorandum.

- 34.2.2. Taxi violence
- 34.2.3. Stock theft
- 34.2.4. Re-possession, arms acquisition and fund-raising
- 34.2.5. Violence between political parties
- 34.2.6. Reactionary violence by AWB *et al*
- 34.2.7. Farm attacks and killings.

Offences committed before 1994

35. With regard to **offences committed before 1994** the RG notes that some offenders, namely those who attempted to murder Rev. Chikane, applied for amnesty for other offences, but did not apply for amnesty in respect of this offence. Indeed the probabilities are overwhelming that the 5 in question committed many other offences, for which they did not apply for amnesty. Former agents of the apartheid state tended only to apply for amnesty in respect of cases in which investigators already had evidence, or where junior officers were at risk of prosecution and were likely to disclose the roles of senior officers.
36. The fact that the 5 had applied for amnesty in other matters but not this case ought to have placed the RG on high alert. This is due to the simple reason that the 5 chose to conceal details of this offence – and in all probability – many others. The reasons alleged in the application forms of the 5 as to why they did not apply for amnesty cannot be taken seriously – and stand as mere after-the-fact fabrications (dealt with in the attached memorandum on the Chikane case). **Not only did the RG not think twice about the omissions of the 5, they accepted without question their patently false explanations.**

“Political offences post 1994”

37. The bulk of the cases recommended for pardon were the so called “**political offences post 1994**”.
- 37.1. The political objective requirement of the TRC’s amnesty process related to those offences aimed at overthrowing the apartheid order and those offences committed to resist such actions. It was not open to amnesty applicants to put up any and all political objectives. Political objectives unrelated to this context would not have been entertained by the TRC’s Amnesty Committee. Since the advent of South Africa’s constitutional democracy South Africans have enjoyed a range of rights of freedoms

including the right to vote and to fully participate in the political process. The rule of law became a central value of the new order. Enforceable rights protected by the Constitution include the rights to human dignity, equality, freedom of expression and association and other enshrined rights.

- 37.2. In reality there was no justification to resort to violence and unlawfulness in the new South Africa as there were proper channels through which grievances could be pursued. Few, if any so called political offences committed ought to have qualified for pardon. **The RG made no reference whatsoever to the glaring difference between the pre-1994 and post-1994 contexts. This obvious factor played little or no role in their deliberations.**
- 37.3. **What may have been justifiable or proportionate conduct in pursuit of a political objective prior to the democratic elections of 1994 would not necessarily be justifiable or proportionate in the constitutional order following such elections. The RG made little or no effort to apply the proportionality test.** It barely considered context. It made no serious attempt to consider whether a particular offence was proportionate to the claimed political objective in the prevailing circumstances.
- 37.4. In the circumstances the RG was happy to recommend pardon for racist thugs who committed hate crimes well into South Africa's constitutional democracy. This is illustrated by fact that the RG recommended pardon to racist bigots who went on a violent rampage against black people in Kuruman in 1995; and also to the four Worcester bombers who targeted shops on Christmas Eve in 1996 only because it was frequented by black persons. They killed and injured innocent civilians, including children, irrespective of their political affiliation.

So called "fundraising" crimes

38. Since the RG made no attempt to apply the proportionality test it was happy to recommend for pardon so called "**fundraising**" crimes involving robberies and cash heists that were committed well after 1994.
- 38.1. Even though it was common cause that the "armed struggle" had ceased by the 1994 elections the RG still found the **flimsiest of reasons** to

recommend pardon in such cases, apparently on the grounds that the political party in question had “endorsed” the applications. Although the PAC representative confirmed that the armed struggle had been suspended in December 1993, there was apparently uncertainty with regard to the PAC policy in relation to “repossession/fundraising units” post 1994. The RG afforded the PAC representative an opportunity for his party to clarify this uncertainty. No such clarification was provided. Notwithstanding the lack of clarity the **“majority of RG members argued that without condoning the crimes in anyway, these deeds were committed in terms of PAC policy, and thus regarded them as political”**,

- 38.2. It is difficult to fathom how the RG could have decided that the crimes were ‘in terms of PAC policy’. The PAC constitution at the time provided for the following fundraising policy:

“The general funds of the P.A.C. shall be derived from proceeds of functions (parties, dances, football matches, etc.), voluntary subscriptions, levies, appeals, donations, bequests, sales of P.A.C. literature, badges, subscription fees of individual members and other sources approved by the P.A.C “.

- 38.3. So even though no remotely justifiable political objective could be put up since there was no longer any “armed struggle”; even though no clarification was provided by the PAC; and even though PAC official policy precluded such illegal acts, the RG was still happy to accept the patently false claim of “*fundrais[ing] ... for the then forthcoming 1999 elections*” as a political objective.¹⁷ **This is indication that the RG was happy to accept any claimed political objective – even when no proper political objective could factually and objectively exist, so long as a political party provided a so called “endorsement”.**
- 38.4. This is perhaps the clearest indication of the ‘**horse-trading**’ that took place in the RG. All such applications should have been dismissed. Where there was indication that a political party had endorsed and/ or knowingly benefitted from organised crime such cases ought to have been referred to the police for further investigation and possible prosecution. Where a political party denied receiving benefit but nonetheless endorsed the pardon application the RG should have censured the party in question

¹⁷ See the recommendation in the matter of AP Godolozzi.

for condoning criminality in the new constitutional order. Instead of promoting the rule of law the majority of the RG preferred to flout it by recommending pardon nonetheless.

Violence between political parties

39. Some 28 of those recommended for pardon fell under the “post-1994” category of “**violence between political parties**”.

- 39.1. **The RG conceded that “*in these cases it was not clear to the RG which applicants were involved in which incident*”** On this ground alone it should not have recommended any pardons in this category. Notwithstanding the RG’s admission of ignorance of the facts they declined to solicit information from the public – even in the face of repeated requests to open up the process. The RG appeared to be satisfied with the simple assurance provided by political parties “*under oath*” “*which parties were involved in which incidents*”.
- 39.2. Little or no consideration as to what political objective was being pursued appears to have been considered. **The mere fact that the protagonists happened to be members of political parties (and/ or endorsed by them) was sufficient.** The RG gave no consideration as to whether the resort to murder and violence to resolve alleged political differences were proportional acts warranting a recommendation for pardon.
- 39.3. Several of these offenders were responsible for serial murders. The list includes two serial killers convicted for 21 murders each and 28 attempted murders between them; another was convicted for 19 murders and 14 attempted murders; another eliminated 15 persons. Such killers are likely to be contract killers who will easily kill again for the slightest reward.¹⁸ **The report ought to have disclosed some disquiet or at least some discussion on whether it would be appropriate to release such persons back into the community.** Moreover the RG chose not to consult with the affected communities to ascertain their views.

¹⁸ The mayor of Richmond in the KwaZulu Natal midlands (where some 30 convicted killers from 3 political parties have applied for pardons), Andrew Ragavaloo, expressed concern that political violence could flare up again with the release of such prisoners, as many murders were never solved. In particular he said that: “*The position from the victims’ families is that they can talk about reconciliation, but only if there is full disclosure*” (as reported in the *Sunday Times* of 27 December 2008).

Reactionary violence by AWB et al

40. The next category was styled “**reactionary violence by AWB et al**” in which 20 applicants were recommended for pardon.

40.1. According to the RG this category included violent offences by the AWB and others “*in reaction to the new democratic order*”. **The RG makes the remarkable claim that offenders who were “driven by hatred or racism” were not recommended for pardon. They are not to be believed.** The RG also stretches belief to breaking point when it finds, by implication¹⁹, that the actions of the AWB members and other neo-Nazi type organisations were not racially motivated and accordingly “*not criminal in nature*”.

40.2. Those recommended for pardon included right wing thugs convicted of murder and assault with intention to grievous bodily harm. All their victims were blacks. In the Kuruman incident the AWB embarked on an orgy of violence against any black person they could lay their hands on. In the Worcester incident a supermarket was bombed on a busy Christmas Eve for no other reason than because it was frequented by black persons.

40.3. In the Kuruman incident the majority in the judgment of the Supreme Court of Appeal (SCA) in *S v Whitehead and Others* [2007] SCA 171 (SA) at par 23 recorded their moral outrage attaching to the conduct of the appellants. They described their actions as:

“an unashamed racist attack perpetrated more than a year after the introduction of a constitutional order. It was arrogant in the extreme and incited terror amongst the black citizens of Kuruman.”

40.4. Other findings included - the attack by armed and khaki clad whites bent on “*teaching blacks a lesson*” was “*a premeditated and meticulously organised callous attack carried out without the slightest provocation or warning*” and “*designed to induce terror amongst black people*” which in turn induced another brutal racial attack that also resulted in the loss of life. Delivering judgment on appeal in the court below, Judge Kgomo, Judge-President of the Northern Cape High Court, said that tampering with

¹⁹ Cf reference under “farm attacks and killings”

the sentence of the men would send the wrong message throughout South Africa and beyond.

"The appellants and those like-minded must be deterred from committing similar offences. They deserved a more severe sentence".

- 40.5. In the judgment of the Worcester Bombings case the Court described the bombings as *"one of the worst crimes imaginable"*.²⁰ It also noted that the crimes would have required extensive planning and in the light of their timing and severity they were *"especially gruesome, merciless, callous and vicious"*.²¹ The Court held that the bombings were acts of terror which could not be condoned under any circumstances.²²
- 40.6. In the judgment of the case against D S Coetzee (SS.30/97), the judge concludes that, on the evidence presented, the accused was indoctrinated to come to *"evil quasi-political, quasi-religious"* beliefs. The court noted Coetzee's view that all people who are not white are animals and must be exterminated and that these beliefs were justified in terms of the Bible. *"It was all presented to him under a guise of religion, this horrible, sickly racist view"*.²³
- 40.7. In particular the judge was constrained to note that the *"seriousness of the evil of the deeds of the offender cannot be debated. In our judgment, this is the most serious evil to not only kill an individual, but a group in a clinical and calculated way merely because based on their skin colour, your personal view is that they are animals. In other words, it is the denial of the dignity of other people that was the motivation of the accused"*²⁴.
- 40.8. The facts in all these matters illustrate beyond question that the applicants were motivated by hatred and racism. Indeed a belief in racial supremacy gave birth to their movements and was the very basis of their actions. **In terms of their own criteria the RG ought not to have recommended any cases in this category for pardon. The judgments in the Kuruman and Worcester case directly contradict the RG's claim that it "corroborated" the facts by consulting the judgments.**

²⁰ , J B v d Westhuizen and Others SS31/1997 at page 11

²¹ *Id* at p 8 - 9

²² *Id* at p 46

²³ DS Coetzee SS.20/97 p 3.

²⁴ *Id*

- 40.9. The RG has been untruthful about its claim that it did not recommend for pardon crimes motivated by hatred and racism. These instances amply demonstrate how the RG has misrepresented the facts to the President. In the circumstances, none of the RG's submissions can be regarded as credible and trustworthy. **Before any of the recommendations of the RG can be relied upon there must be an independent and transparent audit of all the facts the RG alleges.**
- 40.10. The central underlying theme of South Africa's new constitutional order is one of rejection of racial hatred and oppression. **There can be no justification, political or otherwise, for the committal of acts of racial hatred years into South Africa's constitutional democracy.** Those desiring to effect actual political change have their avenues – through politicking, lobbying, organizing, the media and the ballot.
- 40.11. **No consideration was given to whether murder and assault are proportional to the political objective of returning South Africa to a regime of white domination.** Needless to say no consideration was given to whether such a political objective warrants a pardon in the first place.

Farm attacks and killings

41. There is supreme irony in the fact that in the final category of "farm attacks and killings" the RG declined to recommend any pardons because it found that *"the motive was either pure greed or was racially motivated and consequently criminal in nature"*. Such grounds appeared to escape the committee when it decided to recommend pardon to the racist killers mentioned above; and to those who committed robberies and cash heists for no discernible political objective.
42. The RG was so inept it could not even apply a basic modicum of consistency when applying its own criteria.

CONCLUSION

43. The RG ought to have considered and answered the following questions:

- 43.1. Did the applicant make full disclosure in relation to the facts of his offence, inclusive of relevant facts such as who issued commands?
 - 43.2. Was the offence in fact politically motivated? In particular was the claimed political objective in fact an existing political objective; and if so, was such political objective appropriate for purposes of recommending a special pardon?
 - 43.3. Was the offence proportional and necessary for purposes of achieving the stated political objective in the prevailing context?
 - 43.4. What are the implications of issuing each special pardon, and do such consequences militate against the grant of pardon?
44. It is not evident from the documentation disclosed to the Coalition that there was any serious consideration of these questions.
45. The documentation disclosed by the DoJ cannot be relied upon for purposes of deciding whether pardons should be granted in terms of the Special Dispensation. The grant of pardons in exclusive reliance of the RG submissions is likely to be unlawful.
46. If the President claims that he has additional information to warrant the grant of pardon in terms of the Special Dispensation, such information should be disclosed so that the Coalition and other interested parties may consider same, and if necessary, make representations thereon.

SPECIAL DISPENSATION FOR ALLEGED POLITICAL OFFENCES:

SUBMISSION ON BEHALF OF THE SOUTH AFRICAN HISTORY ARCHIVES, THE HUMAN RIGHTS MEDIA CENTRE, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE IN RESPECT OF ISSUES ARISING FROM:

APPLICATIONS FOR POLITICAL PARDON:

J V VAN DER MERWE, A J VLOK, G J L H OTTO, C L SMITH AND H J VAN STADEN

INTRODUCTION

1. These are the submissions of the South African History Archives, the Human Rights Media Centre, Centre for the Study of Violence and Reconciliation and the International Center for Transitional Justice in respect of the applications for pardon by J V Van Der Merwe, A J Vlok, G J L H Otto, C L Smith and H J Van Staden (“the applicants” or “pardon applicants”).¹ As all the aforementioned organisations are associated with South African Coalition for Transitional Justice (SACTJ) they will be referred to as the “Coalition”.
2. The pardon applicants applied for pardon in respect of the attempted murder of former church leader and head of the South African Council of Churches, the Reverend Frank Chikane, on 23 April 1989 at Jan Smuts Airport, Kempton Park.² They were convicted of attempted murder in the Pretoria High Court on 17 August 2007.

Letters of interest

3. In the ‘letters of interest’ sent to the DoJ by Coalition members it was pointed out that:

“The facts of this case have national implications. This case is part and parcel of South Africa’s history. The applicants were key role players in Apartheid South Africa and wielded far reaching powers. Some of the applicants had ample opportunity to disclose the truth before the TRC and declined to do so. They also

¹ At the time of the offence Van der Merwe was the Commander of the Security Branch of the South African Police. He subsequently became the Commissioner of Police. At the time of the offence Vlok was the Minister of Police (also referred to as Minister of Law and Order); Smith was a colonel in the Security Branch; both Van Staden and Otto were captains in the Security Branch.

² Under references: 414/PP/2008 (Van der Merwe), 415/PP/2008 (Vlok), 416/PP/2008 (Van Staden), 417/PP/2008 (Otto), 418/PP/2008 (Smith).

declined to disclose crucial details to the former National Director of Prosecutions, Adv Pikoli. In the circumstances we have good reason to believe that in this special pardons process they have failed to disclose the full truth. We wish to set out detailed representations why we believe this case is highly inappropriate for the grant of a special pardon and will seriously undermine the ongoing project of national reconciliation in South Africa."

4. The Coalition members requested that they needed the following information to place them "*in a proper position to make representations to the President*":
 - 4.1. Copies of the application forms as submitted by the applicants;
 - 4.2. Copies of any document considered by the Reference Group and/ or President;
 - 4.3. Copy of the Reference Group's reasons for recommending the applicants for pardons;
 - 4.4. The record in respect of the voting on the recommendations for pardon.

5. The Coalition members advised that they needed such information in order to:
 - 5.1. make informed and proper representations;
 - 5.2. consider whether the disclosures made by the applicants constitute full and proper disclosure in the circumstances;
 - 5.3. consider claims that the crimes in question were of a political nature or motivated by a political objective;
 - 5.4. comment on any factual, mitigating or other circumstance as alleged by the perpetrator, and where necessary rebut such factual allegations;
 - 5.5. comment on any motivations set out by perpetrator as to why a pardon is appropriate in his case, and where necessary counter such motivations;
 - 5.6. consider the reasoning of the Reference Group behind the recommendation for a pardon and make representations as to the appropriateness and correctness thereof.

Missing documents

6. Certain documents were missing from the documentation supplied by the Chief Directorate: Legal Services.
 - 6.1. In respect of the application of Johannes Velde Van Der Merwe it is stated on page 8 (cont.) that copies of his submission to the TRC of 21 October 1996

as well as a copy of the plea agreement in terms of section 105A of the Criminal Procedure Act, 1977 are attached.

- 6.2. Moreover it is evident from the fourth last paragraph of the letter addressed by the Minister of Justice to the President dated 11 December 2008, that not all minutes or deliberations of the RG have been disclosed to the Coalition.
- 6.3. A request was made for these documents, as well as other missing documents in respect of other applications by our attorneys; the Legal Resources Centre (Cape Town) by way of a letter dated 15 February 2012 and transmitted by fax to the Chief Directorate: Legal Services on same date. Van der Merwe' submission to the TRC was only supplied in May 2012. The documents referred to in sub-paragraph 6.2 have not been supplied.

Documents received

7. On or about Monday 30 January 2012 the SAHA, CSVr and ICTJ received a letter dated 16 January 2012 from J A Nieuwoudt, the Legal Administration Officer of the Department of Justice and Constitutional Development (DoJ). The letter included copies of various documents in relation to the special pardon application of A J Vlok, J V van der Merwe, H J van Staden, C L Smith and G J L H Otto.
8. The documents supplied included:
 - 8.1. A copy of the January 2009 final report of the Reference Group (RG);
 - 8.2. Copies of the reports to the President in respect of the relevant pardon applicants;
 - 8.3. Copies of the letters signed by Dr J T Delport, Chairperson of the RG, setting out the RG's recommendations;
 - 8.4. Copies of the application forms of the pardon applicants (contact details omitted).

THE RECOMMENDATION TO GRANT PRESIDENTIAL PARDON

9. It appears that the RG prepared a one page *pro forma* document for purposes of making recommendations to the President. Certain details would then be adjusted depending on the case. In respect of Johannes Velde Van Der Merwe the RG states:

“By virtue of the powers vested in us in terms of the Paragraphs 2.3³ and 10⁴ of the Terms of Reference, we hereby confirm that we have carefully considered this application for a pardon on its merits placed before us. Based on the information before us, we are unanimously of the opinion that it would be in the public interest to grant a pardon to JOHANNES VELDE VAN DER MERWE.

The following reason is advanced in support of our decision:

1. *Political in that they perceived Reverend Chikane as a threat.*

THEREFORE

(a) The Applicant was indeed a “political offender” and thus the offence(s) committed related to act(s) associated with a political objective as contemplated in terms of section 20(3)⁵ of the TRC Act, 1995.”

10. The undated document was signed by Dr J T Delpont MP, Chairperson: Reference Group. It was accompanied by 3 other documents:
 - 10.1. A two page document titled “Political background – Former security forces”;
 - 10.2. A four page letter dated 11 December 2008 from the Minister of Justice to the President titled: *“REQUEST FOR PARDON IN RESPECT OF OFFENCES COMMITTED IN PURSUIT OF A POLITICAL OBJECTIVE: MR JOHANNES VELDE VAN DER MERWE”*
 - 10.3. The application form of Van der Merwe.

ANALYSIS OF ONE PAGE RECOMMENDATION

11. It is apparent from the one page recommendation that the only inquiry was whether the applicant had committed a political offence. A one liner is put up as the reason why Van der Merwe is recommended for pardon: namely that the intended target for murder, Reverend Chikane was *“perceived as a threat”* and accordingly this rendered the offence as *“political”*. On this basis the RG was able

³ “2. RESPONSIBILITY OF THE REFERENCE GROUP: 2.3. Consider each application for pardon and make recommendations to the President.”

⁴ “10. RECOMMENDATIONS BY THE RG: 10.1 All recommendations made in respect of applications for pardon must be submitted to the President. 10.2 Recommendation by RG shall be made in respect of each application for a pardon. 10.3 The recommendation made by the RG in respect of each application for pardon must reflect the majority as well as the minority views of members, if any, in respect of each application. 10.4 The President has the power to reject the recommendations made by the RG.”

⁵ Section 20 (3) set out the criteria for purposes of determining whether *“a particular act, omission or offence contemplated in subsection (2) is an act associated with a political objective”*.

to state “*therefore*” the “*Applicant was indeed a ‘political offender’ and thus the offence(s) committed related to act(s) associated with a political objective as contemplated in terms of section 20(3) of the TRC Act, 1995.*”

12. Section 20(3) is not a standalone section. It is premised upon the preceding subsections. Indeed it cannot operate rationally without first applying subsections (1) and (2). In particular s 20(1)(c) requires the applicant to make “*a full disclosure of all relevant facts*”. Section 20(3) may only be applied sensibly once it has been established that the applicant has disclosed the full truth.⁶ Aside from the imperative of both the TRC process and the Special Dispensation in promoting national reconciliation through building the truth of South Africa’s past⁷, s 20(3), logically, cannot be applied on the basis of half truths, lies and deceit.
13. Section s 20(1)(c) features nowhere in the deliberations of the RG. It is not mentioned in the terms of reference or in the recommendation papers forwarded to the President. None of the documents disclose any effort to determine the truth or to test the alleged facts. The only document that refers to “*full disclosure*” is one that attempts to justify why it is no longer a relevant factor.⁸ The active avoidance of the truth characterizes this application and indeed the entire Special Dispensation process. This fact alone renders the said process to be fundamentally inconsistent with its central objective of “*completing the unfinished business of the TRC*”.
14. The one page recommendation proclaims that the RG acts in terms of “*the powers vested in us*” in terms of paragraphs 2.3 and 10 of the Terms of Reference. The terms of reference were in fact drawn up by the RG itself. They barely reflect the mission accorded to the RG by former President Mbeki in a joint sitting of Parliament on 21 November 2007, which was to:
 - 14.1. establish a special process for the handling of pardon requests made by “*people convicted for offences they claim were politically motivated, and who were not denied amnesty by the TRC.*”;

⁶ *Albutt v Centre for the Study of Violence & Reconciliation* 2010 (3) SA 293 (CC) at par 70 and 72 where the Court accepted that “(b)efore the President decides whether to grant pardon, he must establish the facts in accordance with the criteria set out in the special dispensation process” and that victims had to be involved “in order to determine the facts on which pardons are based.”

⁷ *Id* at par 58 – 61 and 65

⁸ The Chairperson of the RG, Dr J T Delpont, an erstwhile colleague of the pardon applicants in the Chikane matter (he served as a Deputy Minister of Provincial Affairs during the Apartheid regime), specifically excised truth as a criterion for a pardon recommendation. In a report to the President dated 21 April 2008 he asserted that “*the full disclosure requirement (the requirement which was the cause of the failure in most instances), is surely not a critical element any more*”.

- 14.2. resolve the “*unfinished business*” of the Truth and Reconciliation Commission (TRC) in the interests “*nation-building*” and “*national reconciliation*”;
 - 14.3. be consistent with “*what the nation sought to achieve through the TRC,*”
 - 14.4. consider “*requests for pardon from people who have already been convicted for offences they claim belong among the category of offences that were considered by the TRC Amnesty Committee.*”;
 - 14.5. deal with pardon requests “*in an open and transparent manner, uniformly and in strict compliance with predetermined procedures and criteria.*”;
 - 14.6. not undermine the work of the TRC, but build upon its legacy.
15. President Mbeki pledged that his ultimate pardoning decisions would be guided by the values and principles enshrined in the Constitution, as well as the “*principles, criteria, and spirit*” of the Truth and Reconciliation Commission. The current President is bound by these undertakings.
 16. The RG completely ignored the President’s admonishment that the pardon requests be dealt with in an “*open and transparent manner*”. The process of the RG remained secret, notwithstanding numerous requests that it be opened. The persistent refusals of the RG, DoJ and the Office of the President prompted the Coalition members to go to Court. Both the High Court and Constitutional Court ordered the President to open the process to victims and other interested parties.
 17. As mentioned above, the RG was careful not to include any requirement to disclose the facts or the truth in its terms of reference. This was an immediate deviation from President Mbeki’s conditions, in particular that the work of the TRC not be undermined. The unfinished business of the TRC could hardly be completed by suppressing the truth.
 18. The RG proclaims that “*we have carefully considered this application for a pardon on its merits placed before us. Based on the information before usit would be in the public interest to grant a pardon ...*” It will be demonstrated below that there was precious little information before the RG. Indeed the RG steadfastly turned its back on all offers to provide information on the cases before it. It will also be demonstrated that the RG accorded little consideration to this application, let alone careful consideration. We will also show that it is not in the public interest to grant pardons to Van der Merwe, Vlok, Otto, Smith and Van Staden.
 19. The one page recommendation makes no reference to the other documents that were supplied by the DoJ. However since they were attached to the recommendation we will assume that they were supplied to the President and

were intended to support the recommendation to pardon. We turn to these documents now.

BACKGROUND TO THE PARDON APPLICANTS AND THE ROLE OF SAP

20. Before considering the applications of the pardon applicants it is necessary to briefly place in context the role of the pardon applicants and their institutions during the relevant time period.
21. Van der Merwe and the other pardon applicants occupied senior positions in the South African Police (SAP) or in the Police Ministry (in the case of Adriaan Vlok⁹) during the 1980s. The TRC in its final report concluded that at a certain point, which coincided with the PW Botha's accession to power in 1978, the South African state ventured into the realm of criminality.¹⁰ During this period which ran from the late 1970s to the early 1990s Van der Merwe occupied the posts of, *inter alia*, Second-in-Command of the Security Police, Commander of the Security Branch, Deputy Commissioner of Police (1988 – 1990) and Commissioner of Police (1990-96).
22. Van der Merwe himself conceded that state criminality was the order of the day:

*All the powers were to avoid the ANC/SACP achieving their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts.*¹¹

(General Johan van der Merwe, former Commissioner of Police testifying at the Armed Forces hearing of the TRC.)

23. Van der Merwe disclosed that State President Botha personally ordered him to bomb a building housing civilian activists.¹² Botha is likely to have ordered his security offences to commit a large number of criminal acts. The TRC found that during this period the state committed a host of gross violations of human rights in South Africa.¹³ These included, amongst other violations:

⁹ Vlok served as Minister of Police between 1986-1991

¹⁰ Vol 5 Ch 6, Findings and Conclusions, p 212

¹¹ *Id*

¹² Vol 5 Ch 6, Findings and Conclusions, p 224

¹³ Vol 5 Ch 6, Findings and Conclusions, p 222

- 23.1. extra-judicial killings in the form of state-planned and executed assassinations,
 - 23.2. attempted killings, so-called 'entrapment killings', where individuals were deliberately enticed into situations;
 - 23.3. the mutilation of body parts;
 - 23.4. torture,
 - 23.5. abduction or kidnapping; disappearances,
 - 23.6. severe ill treatment, abuse and harassment;
 - 23.7. destruction of homes or offices through arson or sabotage,
 - 23.8. the unjustified use of deadly force in situations where lesser measures would have been adequate to control demonstrations or detain or arrest suspects;
 - 23.9. the deliberate manipulation of social divisions in society with the intention of mobilising one group against another, resulting, at times, in violent clashes;
 - 23.10. incursions across South Africa's borders with the intention of killing or abducting opponents living outside of South Africa;
 - 23.11. establishment and support to offensive paramilitary units or hit squads for deployment internally against opponents of the government.
24. Van der Merwe and Vlok were at the heart of the state machinery that carried out massive organised state sponsored crime over several years.

Security Branch

25. The Security Branch was the intelligence wing of the former SAP, falling directly under the Commissioner of the SAP and operated in a separate and parallel structure to the Uniform and Detective branches of the SAP.
26. In April 1994, the Goldstone Commission of Inquiry regarding the Prevention of Public Violence and Intimidation handed over to the then State President and a newly appointed International investigation team a report titled '*Report to the International Investigation Team*.' The report, which followed on from the Commission's "Third Force" report of the 18 March 1994, which drew attention to the criminal activities of the Security Branch in the 1980s. Under the heading '*Comments*' the report reads as follows :

"We would like to draw attention to the fact that [former Security Policeman, Paul] Erasmus has opened only one window into the frightening operation of the Security Police in South Africa. Their involvement in violence and political intimidation is pervasive and touches directly or indirectly every citizen in this country. The documents we have been given by one warrant officer can only be a tiny sample of the whole."

27. The report led directly to the establishment of a special team of investigators under the Transvaal Attorney-General, Dr D'Olivieira. The Security Branch consisted of Sections A-G each of which was headed by a colonel. The most controversial of the sections were Section A, which dealt with Intelligence, and Section C, which was the ANC/PAC Desk. Section C1 became known as Vlakplaas.¹⁴ The Security Branch served as the 'political wing' of the South African Police. The target of their activities became any person or organisation which opposed the government and its policies. Their activities included the close monitoring of the affairs and movements of individuals, the detention of tens of thousands of citizens and the torture of many, as well as trials and imprisonment of suspects. In January 1990, General Basie Smit disclosed that the Security Branch had "given attention to" 314,000 individuals and 9,500 organisations" since it was formed in the late 40s.¹⁵
28. The TRC found that¹⁶:
- 28.1. extra-judicial killings were undertaken by a number of different security branch divisions and by the special forces and occurred across the country but with a concentration in areas adjacent to South Africa's borders with its immediate neighbours as well as within those states;
 - 28.2. extra-judicial killings were often the end result of a process of operationally directed intelligence collection on targeted individuals. all three primary security intelligence arms – National Intelligence Service (NIS), Section C2 of the Security Branch, and Military Intelligence;
 - 28.3. co-ordinated their information through joint participation in so-called target workgroups formed in 1986 in certain selected strategic areas whose role was *inter alia* to target individuals for killing outside of South Africa's borders as well as co-ordinating structures such as the Teen Rewolusionere Inligtings Taakspan (TREWITS).¹⁷

¹⁴ The purpose of Vlakplaas was ostensibly as a place to rehabilitate 'turned terrorists' or, as they were called, askaris. The askaris were eventually divided into units and supervised by white security police, and it was this change that transformed Vlakplaas into a counter-insurgency unit. The units responded to requests that were channelled to them via the head of Section C or via branch commanders. Vol 2 Ch 3 State Security Forces between 1960 and 1990: Appendix p 316

¹⁵ Cawthra G, *Policing in South Africa*, p65

¹⁶ Vol 2 Ch 3, The State inside South Africa between 1960 and 1990, p288.

¹⁷ See the evidence presented during the amnesty application of Brigadier Jack Cronje and 4 other former security policemen. They claimed that a "counter-revolutionary intelligence target centre" (known by its Afrikaans acronym "Trewits" Teenrewolusionere Inligtingstaakspan), was responsible for the drawing up of hit lists of prominent activists for "elimination". All intelligence on targets, internally and externally, had to be channelled to Trewits where planning for action would take place. According to an unauthenticated note titled 'VD MERWE / TEIKENS', Trewits consisted of representatives from the Security Police, Military

Role of Van der Merwe

29. Van der Merwe applied for amnesty in respect of the:

- 29.1. murder of 3 persons in Swaziland in June 1986.¹⁸
- 29.2. cover up of the disappearance and murder of Stanza Bopape.¹⁹
- 29.3. murder of 8 persons in June 1985 through booby trapping hand grenades.²⁰
- 29.4. bombing of cinemas showing the film “Cry Freedom” and the making of bomb threats against other cinemas.²¹
- 29.5. bombing of Khotso House, home of the SA Council of Churches (Vlok also applied),²²
- 29.6. bombing of Cosatu House (as did Vlok).²³

30. The Commission made a comprehensive finding concerning Operation Marion. In essence it found that the South African Defence Force (SADF) conspired with Inkatha to provide it with a “*covert, offensive paramilitary unit (hit squad) to be deployed illegally against persons and organisations perceived to be opposed to or enemies of both the South African government and Inkatha*”. The TRC found that SAP generals Van der Merwe and Basie Smit responsible for defeating the ends of justice by helping to cover up the crimes of the hit squad members.²⁴

Intelligence, National Intelligence and ‘B S’. The hit lists were submitted to a special cabinet committee for approval. General van der Merwe allegedly said in this note that the committee was one of the mechanisms set up by the former state to ensure that the security forces operated within the parameters of government policy. The chairman of the committee was allegedly Barend du Plessis. The committee was apparently still in existence in 1990 and dealt with both internal and external operations. Written orders were never made. The instructions were ‘very subtle’ and no warnings were given before the orders were issued. Examples included the bombings of Cosatu House and Khotso House. Other orders came directly from the President and Cabinet. The unknown author of the note claimed he made certain of this before carrying out the actions. He claimed that terrorism on a ‘phenomenal’ scale was state supported. The admissions made by General Van der Merwe in respect of his role in Khotso House tend to lend credibility to this document. Trewits (Unit C4) which started in early 1988 had its offices in Charter House, Pretoria. Representatives of Security Branch, Military Intelligence, National Intelligence met under the chairmanship of the Security Branch.

¹⁸ AM4157/96; Vol 2 Ch 3, The State inside South Africa between 1960 and 1990, p 212

¹⁹ *Id*

²⁰ Vol 2 Ch 3, The State inside South Africa between 1960 and 1990, p258 - 260

²¹ Vol 2 Ch 3, The State inside South Africa between 1960 and 1990, p

²² *Id*

²³ Vol 2 Ch 3, The State inside South Africa between 1960 and 1990, p258 - 260

²⁴ Vol 3 Ch 3, Regional Profile: Natal and KwaZulu, p220. See Memorandum dated 3 August 1989 from General van Tonder to Vice-Admiral Putter titled ‘Operation Marion: Liaison with SAP Security Branch’ dealing with discussions at Liberty Life building on 8 November 1988 between Vice-Admiral Putter and Generals van der Merwe and Smit.

The Chain of Command

31. Brigadier Jack Cronje, former Divisional Commander of the Northern Transvaal Security Police and former Commander of C1 Section (Vlakplaas) in his testimony before the TRC explained the nature of the chain of command involving Van der Merwe in a particular operation:

*“This instruction was given to me in Springs by General van der Merwe and during this instruction he specifically indicated to me that this came directly from Minister le Grange and that it had indeed been authorised by President PW Botha, as well as Commissioner Johan Coetzee, both of whom knew about this and authorised it ... If it should be claimed therefore by anyone that the State Security Council was not aware of the actions of the security forces and the security police or of any specific incidents this would not be true.”*²⁵

32. Ultimate authority came from President PW Botha, his senior ministers and the State Security Council (SSC)²⁶.

32.1. The TRC noted that at the Commission’s hearings on the SSC, *“senior politicians and some senior military and intelligence heads argued emphatically that although what they referred to as “ambiguous language might or could have been interpreted as authorising illegal conduct, it was not the intention of the SSC or the cabinet that any illegal acts or actions should be undertaken.”*²⁷

32.2. The Commission doubted this assertion in the light of the testimony of senior police officers, including General van der Merwe that the word ‘eliminate’ could, in certain circumstances, mean ‘kill’, or that they interpreted it as

²⁵ Vol 3 Ch 6, Regional Profile: Transvaal, p629

²⁶ The State Security Council was a special cabinet committee on security set up in 1972. In terms of the Security Intelligence and State Security Council Act, Act 62 of 1972, the SSC was composed of: the State President (as the Chairperson); senior Cabinet ministers and ministers of Foreign Affairs, Defence, Law & Order and Justice; the Chief of the SADF and Commissioner of Police; and the Director Generals of National Intelligence, Foreign Affairs and Justice. In addition, the SSC was empowered to further co-opt ministers and officials of other departments on a permanent or *ad hoc* basis. In terms of the Act the SSC was to play an advisory role to the Cabinet with regard to: formulation and implementation of national policy and strategy in respect of the security; policy regarding the combating of any specific threat; and intelligence priorities. However, in reality the SSC assumed decision-making powers beyond the merely advisory powers conferred upon it in the Act. It was in the SSC and not Cabinet where matters of greatest sensitivity and importance were deliberated and agreed upon and the Cabinet merely provided the rubber stamp.

²⁷ Vol 5 Ch 6, Findings and Conclusions, p217

meaning 'kill'. Van der Merwe, himself a member of the SSC during his period of office as police commissioner, testified thus: If you tell a soldier "eliminate your enemy", depending on the circumstances he will understand that means killing. (Armed forces hearing, transcript, p. 32.)²⁸

32.3. The TRC accordingly found that certain members of the SSC (the State President, Minister of Defence, Minister of Law and Order and heads of Security Forces) did foresee that the use of words such as 'take out', 'wipe out', 'eradicate', and 'eliminate' would result in the killing of political opponents.²⁹

32.4. The TRC found State President Botha responsible for personally ordering former Minister of Law and Order Adriaan Vlok and former police commissioner Johan van der Merwe to destroy Khotso house in Johannesburg, (a building occupied by organisations considered by Botha to be a threat to the security of the government).³⁰ Other unlawful operations found by the TRC to have been ordered by Botha or senior members of his cabinet included.

32.4.1. acts of sabotage by blowing up such public facilities as the diplomatic mission of the ANC in London, the South African Catholic Bishops' Conference (Khanya House) and the Congress of South African Trade Unions (COSATU);

32.4.2. undertake a 'false-flag' operation in the form of the placing and uncovering of an arms cache in order to provide a pretext for the state's armed forces to attack targets in an independent neighbouring state, in a clear violation of international law.³¹

APPLICATIONS OF JOHANNES VELDE VAN DER MERWE AND THE OTHER FOUR APPLICANTS

33. The application forms of Vlok, Otto, Smith and Van Staden are more or less a carbon copy of each other. They all refer to the background and motivation

²⁸ *Id*

²⁹ *Id*

³⁰ Vol 5 Ch 6, Findings and Conclusions, p224

³¹ Vol 5 Ch 6, Findings and Conclusions, p219

provided in the Van Der Merwe application and “fully associate” themselves therewith and they request the President to incorporate such background into their applications.

34. The application of Van Der Merwe, and by implication those of other applicants, is remarkable for what it does not disclose. This is all the more astonishing given the pivotal role played by Van Der Merwe and Vlok in orchestrating the hidden hand of state violence against those opposing apartheid.

Disclosure of relevant facts

35. Paragraph 3.1 of the pardon application form requires the applicant to state “*(h)ow was the offence(s) was committed (details of what happened during the commission of the offence(s)).*” The question appears to be tailored to encourage the applicant to exclude context and to focus exclusively on the physical commission of the crime.
36. Nonetheless Van der Merwe must have realized that some context was necessary and he did set out certain details as to what happened before the attempted murder. However he was careful to avoid disclosing key details that would have painted the full picture and contributed to building the truth of South Africa’s past.
37. In paragraph 3.1.1.1 he reveals that during 1987³², together with the late Brigadier Broodryk (his 2IC at the Security Branch), he attended a meeting at the HQ of the South African Defence Force (SADF) with the Chief of the Army, the now deceased General Kat Liebenberg³³ and representatives of National Intelligence, Military Intelligence³⁴ and SADF Special Forces.³⁵ **Van der Merwe only disclosed**

³² It would be important to know when in 1987 this meeting took place. Needless to say the RG did not enquire.

³³ There are several references in the TRC Final Report, as well as state documents, to Liebenberg approving unlawful operations and overseeing target selection for purposes of murder. He was a former General Officer Commanding (GOC) of Special Forces.

³⁴ Established in 1961, the Chief Directorate Military Intelligence is more commonly referred to as Military Intelligence. It had the same aim as the Military Intelligence Division, namely “to determine the nature extent and time scale of the military threat against the RSA on national and inter-departmental levels”. According to the Military Research Group, Military Intelligence was responsible for: “*the fielding of MI agents within and without the country’s borders; the gathering and analysis of information gathered by all SADF Intelligence branches and the collation of all signals intelligence gathered by electronic warfare structures, and the fielding of select death squad units throughout the country.*”

³⁵ ‘Special Forces’ was an arm of the SADF established in 1974 as an unconventional military formation largely involved in carrying out cross-border operations and clandestine internal operations. In the words of former SADF General Tienie Groenewald, the function of Special Forces was “*om oorlog te maak*”. Special Forces had its own command structure with the General Officer Commanding (GOC) reporting

the names of deceased persons who attended this meeting. Deceased persons cannot be prosecuted. He did not disclose who the other representatives were. **This is not surprising as these persons were co-conspirators to an attempted murder and in all likelihood countless other crimes, including murder.** The RG displayed no interest in establishing the identities of the other parties who were responsible for the attempted murder of the Reverend Chikane.

38. According to Van der Merwe, Liebenberg stated that the instruction to murder anti-apartheid activists, including Reverend Chikane, came from a “higher authority”. **Van der Merwe does not reveal who or what this ‘higher authority’ was.** He does not state that Liebenberg declined to disclose this information. He also does not state under oath that he does not know who this higher authority was. It can be safely assumed that Liebesubnberg did disclose this or that such authority was already known to Van der Merwe and the participants of the meeting. Indeed it would have been inconceivable for the heads of such agencies to agree to plot mass murder without knowing where the instruction was coming from. **The RG displayed no interest in establishing the identity or identities of the ultimate party or parties responsible for the attempted murder of the Reverend Chikane; and by necessary implication the person(s) or body responsible for masterminding the bulk of state sponsored organised crime under apartheid.**
39. Van der Merwe indicated that Liebenberg explained that this higher authority instructed that “drastic steps” using the “full capacity of the state” had to be taken against “certain political activists”. In so-called “**extreme cases**” they could be “**eliminated**”. The Reverend Chikane was obviously regarded as an “extreme case”. What would have made Chikane an extreme case? This target was an activist and a leading member of the church who was a vocal but lawful and non-violent opponent of apartheid. Some facts about him:
 - 39.1. In 1979, Chikane completed his training as a pastor at the Apostolic Faith Mission. He was subsequently defrocked in 1981 due to his political involvement but was re-instated in 1990.
 - 39.2. In 1983 he served as the Director at the Institute of Contextual Theology a position held until 1987.
 - 39.3. Chikane was the vice president of the Transvaal region of the United Democratic Front (UDF) from 1983 to 1985. He was charged for treason in February 1985 but the charges were withdrawn.

directly to the Chief of the SADF. The formation included four Reconnaissance Regiments and, from May 1986, the Civil Co-operation Bureau (CCB).

- 39.4. In 1985, Chikane was one of the leading promoters of the Kairos Document, a leading Christian denunciation of Apartheid.
- 39.5. In 1987 he was elected General Secretary of the South African Council of Churches (SACC) a position he held until 1994.
40. **Van der Merwe did not disclose what constituted an 'extreme case' warranting an extra judicial killing** but since Chikane was such a case this could have been anybody who was effective at mobilizing opposition to the apartheid state – even if such person employed entirely lawful and peaceful means. If Chikane was regarded as an 'extreme case' then any anti-apartheid activist who served in a reasonably senior position in an organisation opposing the government would qualify for elimination. This fact ought to have been of great concern to the RG. They displayed none. **The RG sought no clarity on what constituted an extreme case and why a non-violent man of the church qualified for elimination.**
41. Since the preferred method of killing was to give the impression of a natural death (as in this case) or the appearance of factional conflict it would be close to impossible for investigators and researchers to work out who was on the state's **death list.**
- 41.1. Van der Merwe states that a list of names was handed out at the meeting, which he assumes was compiled by Military Intelligence. It is not believable that the Commander of the Security Branch accepts a list of persons to be harmed, possibly murdered, without being told or inquiring who compiled such list.
- 41.2. The security agencies present divvied up the targets on the list between them. The Security Branch was to handle those individuals based within South Africa. Van der Merwe will have us believe that he can only recall two names on the list – one being Chikane and the other, the late Joe Slovo (who at the time was based outside South African and would not have been on the Security Branch list). It is odd in the extreme that the only other name apparently recalled by Van der Merwe is not one that would have been on his list.
- 41.3. Van der Merwe is not to be believed. He ought to have been asked to produce the list or disclose the other names. **The RG apparently saw the list as irrelevant and took no steps to secure such truth. This truth is part and parcel of South Africa's history. It would have been immensely**

important for the families and communities of those individuals who did perish from such actions. This task was part of the mission of completing the “unfinished business of the TRC” but was studiously avoided by the RG.

- 41.4. There may be a correlation between this list of “*certain political activists*” and “*the list of politically sensitive persons*” discussed at the special meeting of the SSC on 14 July 1986, under the heading: ‘Monitoring Report on the National Emergency’.
- 41.4.1. At the 14 July 1986 SSC meeting **Vlok**³⁶ briefed the meeting on plans and steps in relation to a number of issues including: **steps against politically sensitive persons**.
- 41.4.2. At the SSC meeting of 8 September 1986 (SVR 14/86) under agenda-item 2: ‘Report on the National Emergency’, item (g) was titled “*the list of politically sensitive persons*”. It was recorded that the “*list of politically sensitive persons had to be shortened and methods other than detentions must be considered.*” **Vlok was “tasked”**. There was no indication why the list had to be shortened, or what methods were to be used against persons on the list.
- 41.4.3. At the SSC meeting of 22 September 1986 (SVR 15/86) under agenda-item 3d: ‘Report on the National Emergency’ it was recorded at item (d) that “*The list was accepted after discussion.*”
- 41.5. Unlike most other ‘optredes’ (steps) the SSC documentation is silent as to what steps were to be taken against the politically sensitive people. Given that the SSC had already authorised the restriction of some 27 UDF leaders (“certain prominent figures”) at its 12 May 1986 meeting, it is likely that the SSC had other but, this time, undisclosed measures in mind. This list has never been disclosed.
- 41.6. There are some striking similarities between the two lists (if indeed they are two lists).
- 41.6.1. Both refer to “**political**” individuals as opposed combatants. The list supplied by Army General Kat Liebenberg was described by Van

³⁶ Then Vlok was the Deputy Minister of Police.

der Merwe as comprising “*certain political activists*”. The SSC list was titled the list of “*politically sensitive persons*”.

- 41.6.2. Another parallel is that **Vlok** played a role in both lists. He was in charge of the SSC list and played a prominent role in overseeing the actions of the Security Branch.
- 41.6.3. The heads of the security agencies present at the Liebenberg meeting – the SADF, SAP and National Intelligence were all members of the **SSC** and would have attended the SSC meetings referred to above.
- 41.6.4. Finally the **timing** of the ‘work on the 2 lists is suspicious to say the least. The compiling of the SSC list by Vlok and its approval by the SSC took place between July and the end of September 1986. Liebenberg then convened his task team to act on the “*political activists*” list at an undisclosed date in 1987. Possibly some months after the finalisation of the list of ‘*politically sensitive*’ persons.
- 41.7. There is a strong probability that the two lists are related and may in fact be the same list. If that is the case then it appears that Van der Merwe and Vlok were not only protecting his colleagues in the former SADF and NI, but also very senior politicians who served on the SSC. **This is important truth for the victims and their families – and also for South Africa as a nation. The RG approach ensured that this truth would not emerge.**
- 42. Van der Merwe disclosed that Vlok was intimately involved. He reported to Vlok and gave him a copy of the list.³⁷ Accordingly Vlok was also in a position to shed light on the list and its contents (assuming it’s a different list to the SSC list) but has steadfastly declined to do so. Vlok and Van der Merwe decided to set up a unit “*for the execution of the directive*” and recruited certain officers to run the unit, which included the 3 other pardon applicants. These 3 also had the list but have declined to disclose it. **None of the pardon applicants bothered even to disclose the name of the unit and the *modus operandi* it employed. Needless to say this was of no interest to the RG.**
- 43. When General Basie Smit succeeded Van der Merwe as Commander of the Security Branch in October 1988, both Vlok and Van der Merwe, anxious that the momentum of the project be maintained, met with him to explain the project – and

³⁷ Paragraph 3.1.1.2 of the Van der Merwe pardon application

specifically instructed him “*that the Reverend Chikane was to be killed*”. The probabilities are overwhelming that other targets were also discussed with Smit. Smit in turned arranged with General Chris Smith for Chikane to be “*taken out*” by organophosphate poisoning.³⁸ **These passages give lie to the claim by Van der Merwe and Vlok that they were merely passing on messages (as they claimed later in their applications).**³⁹

Benefit to pardon applicants

44. Paragraph 3.3(a) poses the question to pardon applicants: *Did you benefit personally in any way by committing the offences(s)?* Van der Merwe’s emphatic response (and that of Vlok and the other applicants) is “*NO – in no way whatsoever*”. This is not true. Van der Merwe was probably stating that he received no financial reward or benefit for such actions. While he probably did not receive any immediate such benefits there can be little doubt that he, Vlok and his colleagues were ultimately richly rewarded. **The dutiful carrying out of orders from the highest authorities and the elimination of troublesome activists in the context of the 1980s helped to advance the careers of all involved.** Van der Merwe was promoted in quick succession from Security Branch Commander to Deputy Police Commissioner to Commissioner of Police. Vlok maintained his position as a key cabinet member all the way into the 1990s. Smith who was a colonel at the time of the offence rose through the ranks to become a major-general. Van Staden and Otto who were captains became colonels.

Was the offence ordered by organisation?

45. Question 3.4(a): *Was the offence(s) committed in the execution of an order or, the approval of, or authorised or in terms of an organisation, by a political part of organisation, institution, liberation movement or body and if yes, state the name of political of the political party, organisation, institution, liberation movement or body.*
- 45.1. This appeared to be the key question for the RG. So long as an organisation endorsed the application the RG appeared happy, in virtually all the cases, to recommend the application, regardless of other factors.
- 45.2. Van der Merwe states that he committed the offence as a member of the SAP in consultation and with approval of Vlok, his political head. He then

³⁸ Paragraphs 3.1.1.3 - 4 of the Van der Merwe pardon application

³⁹ Paragraphs 3.4 (a) – (b) of the Van der Merwe pardon application

attempts to minimize their roles claiming that they were “*not actively engaged in the offences and did not authorize the ultimate actions*”. However, passing on or conveying instructions to subordinates to carry out a murder; setting up and resourcing a unit to carry out this hit and others; and taking follow up action to ensure it happened is about as active as one can get in organised crime. That the two were not actually involved in the actual physical act does not reduce their level of culpability. **Indeed their culpability is considerably greater than those of the foot soldiers who attended to the actual poisoning.**

- 45.3. For his part Vlok initiates his answer to this question by referring to Van der Merwe’s application, even though as Minister, Van der Merwe reported to him. Vlok claims that the order “*did not originate with me, I received it, and act upon it – passing it on for implementation.*” Vlok will have us believe that he played the role of messenger. He stretches belief to breaking point. A key minister with a security portfolio – and regular participant on the SSC – was no messenger. Vlok persists with his charade by claiming that as:

“he did not know who gave the original order, I am at this stage unable to determine this, all the possible individuals passed away: Mr. P W Botha (State President and leader of the National Party) and Gen. Kat Liebenberg, who chaired the meeting attended by Gen. Van der Merwe.”

- 45.4. Like Van der Merwe, Vlok engaged in the shameful pretence of ‘speculating’ that only dead persons have the answers. Since the dead cannot speak, Minister Vlok as mere messenger cannot assist any further. Vlok’s will have us believe that the orders dropped out the sky and he simply passed them on. **Vlok may have washed the feet of his victim in an apparent act of contrition, but we submit he needs to wash away his own lies and deceit if he wishes to reconcile himself with the South African people.** He offers nothing but contempt for South Africans by dishing up patently obvious fabrications and half truths. **His conduct seriously undermines South Africa’s ongoing project of national healing and reconciliation.** The RG ought to have rejected his application on this basis alone. Instead it shamefully acquiesced in the deception by averting its gaze.

Details of authorizing party

46. Question 3.4(b) requires the applicant to state “*the particulars of such order or approval or policy and the date thereof and the name(s), address(es), telephone*

numbers(s) or any other contact details of the person(s) who gave such an approval or order.” Instead of answering this question Vlok and Van der Merwe persist with their falsehoods. They again play the role of innocuous messenger, which was to simply “convey” the instructions. They will have us believe they were so uninvolved and detached from such matters that they “*did not authorize*” anything and were “*even unaware*” when the ultimate offences were committed. The two had spent many years in ostensible law enforcement and yet appear to believe that their ignorance as to when and how the offence was committed somehow absolves them or lessens their culpability.

What was the political objective/ why was the offence committed?

47. Question 3.4(c) asks “*what were the political objective, if any, you sought to achieve by committing the offence(s)?*” Van der Merwe refers to his paragraph 3.1.2 under the heading “Why was the offence(s) committed”.

47.1. There is no paragraph 3.1.2 in the copy of Van der Merwe’s application supplied to us. In paragraph 3.1.1.3 Van der Merwe claims that Chikane “*played an important role to destabilize the RSA economically and to further the aims of the ANC to overthrow the government*”. Van der Merwe makes this bald allegation. He does not offer a single fact to support his claim, which the RG simply accepted without question.

47.2. In Vlok’s application he refers to his own paragraph 3.1.2 in answer to the question “*Why was the offence committed?*” While Vlok refers to the application of Van der Merwe he goes further (in paragraph 3.1.2 of his application). He stated:

“...Members of the South African Police were murdered and maimed, in some cases in the most gruesome way. Any person suspected to assist the police was branded a collaborator and murdered in a barbaric and brutal way, often by means of the so-called necklace method...”

47.3. Vlok does not explain why he chose to add this passage. However it can only be an explanation as to why it was decided to murder Chikane. Vlok does not allege that Chikane was associated with practices such as necklace murders. However he appears to be suggesting that there was some link between Chikane and such barbaric practices to justify his elimination. We know of no evidence anywhere to justify such a wild inference. The only

information we could find on record was Chikane's opposition to such violence.⁴⁰ **If there was any such evidence Vlok would have presumably included it. There was none but this did not stop Vlok from gratuitously making such a reference to justify poisoning a church leader. On this ground alone, the RG should have rejected Vlok's application.**

Did the organisation benefit?

48. Question 3(d): *"Did your organisation, institution, body or liberation movement benefit from the commission of the offence(s)?"*

48.1. Neither Van der Merwe nor Vlok answered this question directly. Van der Merwe says that *"with hindsight I would say it was a futile effort"* in that it did not disrupt the activities of the ANC/ SACP alliance.

48.2. Vlok concedes that at the time he and his colleagues felt that such action would benefit them, but lies when he claims that killing Reverend Chikane *"would benefit us in our opposition to the armed struggle"*. Chikane was not involved in the armed struggle. **Notwithstanding this patently false claim the RG raised no issue.** Unlike Van der Merwe, Vlok does not state that with hindsight such crimes were futile, rather he says its *"debateable"*. Vlok is clearly of the view, even with hindsight, that there may still have been some value in such unlawful conduct. **This ought to have piqued the interest of the RG. At the least it ought to have sought clarity. It sought none.**

Why the pardon is in the public interest?

49. In answer to question 3.6, Van der Merwe points out that his pardon would be in the public interest since, amongst other things, as commissioner he played a "major role to ensure free and fair elections" in 1994 and his force "maintained law and order" during this time. In effect he asks to be rewarded for doing no more than what was expected of the head of a police force. In any event his claims are questionable.

49.1. The most violent period of South Africa's history was between 1990 and 1994.⁴¹ The Human Rights Committee (HRC) estimated that some 14 000

⁴⁰ <http://www.sacc.org.za/ARCHIVED%20SACCNEWS/about/celebrate12.html>

⁴¹ See: <http://www.sahistory.org.za/article/era-destabilisation>

persons perished in political violence in this period. According to the HRC over 90 percent of the 13933 deaths recorded were attributable to vigilante-related attacks on township communities, retaliatory attacks, deaths in cross-fire and indiscriminate attacks on commuters, beer-hall patrons and mourners.⁴²

49.2. The HRC notes that during this time period approximately 260 victims died every month on average in political violence, but from the 10 months prior to the elections the monthly average jumped to 460 deaths. The HRC concludes that this was a “*clear indication of the organised resistance to the advent of a democratic order.*” Some 4000 lives were lost in this period.⁴³ Hundreds of deaths were directly attributable to the security forces and state sponsored hit squads. The HRC attributed much of the surge in violence to the “*hidden hand*’ of covert operations, rampant vigilantism, and thinly disguised collusion by the security forces and hit squads”. Innumerable allegations were made of security force complicity in vigilante activity and massacres and much evidence was produced.⁴⁴

49.3. The director of the HRC, Max Coleman, described this period as South Africa being “*plunged into a period of destabilisation*”. He attributed responsibility to “*the beneficiaries of apartheid and those who had a stake in defending and perpetuating the power which they enjoyed through, or inherited from, the system of apartheid.*” Amongst these stakeholders was the “*security establishment*”.⁴⁵

50. Far from maintaining law and order, Van der Merwe who was Commissioner of Police during this entire period, presided over the most violent and lawless period of South Africa’s history. As the leading institution responsible for safety and security, the SAP could have nipped the violence in the bud through effective and impartial policing. Thousands of lives could have been saved. **Impartial policing during this period was the exception, not the rule. Van der Merwe’s role in this period should be closely investigated. If anything his conduct during this period constitutes particularly aggravating circumstances.**

⁴² SAPA Report on HRC submission to the TRC, 27 May 1997:

<http://www.justice.gov.za/trc/media/1997/9705/s970527e.htm>

⁴³ HRC monthly reports, July 1993-April 1994: In total for the 10-month period, 4608 deaths were reported across the country or 2000 more than predicted from an extrapolation of the previous 3 years. In percentage terms, the political death rate for the period was 78% higher than during the previous 3 years and the incident rate was 102% higher: <http://www.sahistory.org.za/article/countdown-elections>

⁴⁴ SAPA Report on HRC submission to the TRC, 27 May 1997:

<http://www.justice.gov.za/trc/media/1997/9705/s970527e.htm>

⁴⁵ *Id.* See also: <http://www.sahistory.org.za/article/post-election-political-violence>

51. Another reason he offers was his meeting with SAP members in 1995 where he mentioned that he was applying for amnesty and that he and other generals of the security branch “*were prepared to accept responsibility for any deed that was executed on our instructions, or in consequence of our instrumentality*”. If Van der Merwe, and Vlok for that matter, were true to their word they would have applied for amnesty in respect of many more cases. They do not disclose in their pardon application that they limited their applications just to those cases where investigators already had evidence implicating them; or where junior members had been implicated and they were asked to accept their share of responsibility. **That is the one and only reason why Vlok and van der Merwe sought amnesty. Nothing else explains their abject failure to come clean with the nation and apply for amnesty in respect of their other crimes.**
52. Van der Merwe, Vlok and the other applicants have not disclosed who else was on the list distributed by Army General Kat Liebenberg. They did not apply for amnesty for any other offence committed against the persons on the list.⁴⁶ They will have us believe that the only person on the list to be acted against was Reverend Frank Chikane. They are not to be believed. **Their plainly transparent attempt to deceive the nation should not be countenanced. On this ground alone their recommendation should have been rejected. The RG was however happy to play along in their farce.**
53. It is apparent that the pardon applicants were not only aware of the pernicious role of the South African Defence Force (SADF) in murdering unarmed civilians – but they collaborated in such crimes.
- 53.1. Yet none of them – even when claiming to be cooperating with the TRC - bothered to supply the necessary evidence to shed light on the role of the SADF or to cooperate with criminal investigations.
- 53.2. It is quite evident that the generals and officers of the SADF took a calculated risk not to apply for amnesty because they were fully aware of the debilitated state of the criminal justice system at that time. The fact that many prosecutors and judicial officers were, in those times, dutiful servants of the apartheid regime would have given them considerable comfort.

⁴⁶ If they did then they did not disclose this crucial detail and accordingly they are in contravention of the TRC Act which required the full disclosure of all relevant facts.

- 53.3. When General Geldenhuys and the other generals claimed that “*the process failed to provide for incidents in which members of the Defence Force could have been involved*”, they were really saying that they preferred not to disclose the truth and would only take part in a blanket amnesty with no conditions attached. Hence the reference to a “*general amnesty*”.
54. Van der Merwe and his co-conspirators then engage in the theatre of the absurd by claiming: “*We were prepared to disclose the truth throughout*”. He adds the shrill plea: “*we were only in possession of limited information and as the SA Defence Force emphatically refused to take part in the process, there was no conceivable way in which we were able to reveal all the facts. Consequently, an application for amnesty would not have been successful.*” **This is plainly an after-the-fact fabrication.**
- 54.1. In the first place it is abundantly clear from what is set out above that Van der Merwe and Vlok were not shackled by a lack of information.
- 54.2. Both Van der Merwe and Vlok were legally represented and would have known that they were not required to disclose facts they were genuinely unaware of. This much is patently obvious even to laypersons.
- 54.3. A full and frank disclosure of their own crimes; and what they knew about the surrounding facts, would have been more than sufficient to warrant an award of amnesty.
- 54.4. If in fact they needed more “*information*” or if they really wished to facilitate the disclosure of the full truth **they could have easily cooperated with investigators**. The fragile veil of deception surrounding the role of the SADF and apartheid era politicians would have been easily pierced. They had no interest in disclosing the role of their erstwhile partners in organised state sponsored crime and they are still protecting them to this day.
- 54.5. The RG failed to probe an obvious contradiction: **in the mid 1990s they were unable to apply for amnesty because they had “limited information” and yet in 2008 they somehow generated sufficient information to apply for a political pardon**. What do they know today that they did not know in the 1990s? Since the applicants disclosed little of nothing of value (particularly in relation to the role of the SADF) we can only presume that they must have felt emboldened to apply for a special pardon on the basis that the truth was no longer a “*critical element*” of the process.

- 54.6. The fact is that there was never any plan to apply for amnesty in the mid 1990s since at that time there was no inkling that the attempted murder would ever come to light. **It was only some years later when another investigation disclosed the roles of the junior officers that the web of lies around this case began to unravel.** The junior officers understandably approached their commanders to assume their proper share of the responsibility.
55. Van der Merwe and the other applicants disclose that they applied for an indemnity from prosecution in terms of the amendments to the National Prosecution Policy dated 1 December 2005. They allege they submitted “*all the facts*” to the NPA. This claim is a fabrication.
- 55.1. They claim that they submitted themselves to a polygraph test, as if such a test is determinative of anything. Such tests are nothing more than a measure of bodily functions and carry no weight or standing in South African law.⁴⁷
- 55.2. The amended Prosecution Policy employed similar criteria (essentially the TRC amnesty criteria and others) to the Special Dispensation in making determinations whether to grant an indemnity from prosecution. **The then National Director of Public Prosecutions, Adv Vusi Pikoli, stated in an affidavit before the Ginwala Commission of Inquiry that since they “*had declined to disclose in full*” he declined to give them “*immunity from prosecution*”.**
- 55.3. Van der Merwe claims that he and co-conspirators received indemnity for the attempted murder in terms of a Government Notice published under the Indemnity Act 35 of 1991. He has not provided the notice and it can be safely assumed that it did not refer to the attempted murder of Chikane. Moreover, Van der Merwe neglected to disclose that the Indemnity Act was repealed in 1995.⁴⁸
- 55.4. Van der Merwe then claims that they could have reviewed the decision of the NPA before the High Court but that the costs of the litigation would have

⁴⁷ *Abdurageem Randall v Pioneer Mechanical Contractors CC: Metal and Engineering Industries Bargaining Council* case number MEWC 5691, date of award 14 October 2010.

⁴⁸ See TRC Act, s 20(4) which refers to ‘the Acts repealed by section 48’. These are the *Indemnity Act* 35 of 1990, the *Indemnity Amendment Act* 124 of 1992 and the *Further Indemnity Act* 151 of 1992.

been prohibitive. In reality they did not litigate because there was simply no prospect of success.

- 55.5. It should also be noted that the Prosecution Policy amendments were struck as unconstitutional. On 12 December 2008 judgment was handed down by the Pretoria High Court in the matter of *Thembisile Nkadimeng and Others vs. The National Director of Public Prosecutions and Another* (TPD case no 32709/07)). In this matter Legodi J held that the policy amendments to the Prosecution Policy constituted an impermissible rerun of the TRC's amnesty process.
- 55.6. **The claim by Van der Merwe and Vlok that they came forward out of the goodness of their hearts to stand by Smith, Otto and Van Staden, who were entirely oblivious of their “involvement”, is not a credible claim.** Even assuming that there had been no interaction whatsoever between Smith and Van der Merwe on the running of the “unit” or hit squad – which is highly improbable, Smith and his juniors would have known the chain of command and how such orders were passed down. They were ordered to conduct formally authorized police operations (which included murder) and were not engaged in private frolics of their own. The claim that Vlok and Van der Merwe came forward, without any prompting, is yet another obvious falsehood.

VAN DER MERWE'S SUBMISSIONS TO THE TRC

56. The application form indicates that Van der Merwe's submission to the TRC, as well as a copy of the plea agreement, was attached to his application. However the Department of Justice did not include these documents in the packages provided to Coalition members. Van der Merwe's submission, dated 21 October 1996, was supplied subsequently. In these submissions Van der Merwe indicates that he and 3 former commissioners of the erstwhile South African Police, namely Generals Mike Geldenhuys, Johan Coetzee and Hennie de Witt, submitted a joint memorandum to the TRC. An undated and unsigned copy of such memorandum was attached to Van der Merwe's submission.
57. Van der Merwe indicates that his submissions were as a result of a subpoena to appear before the TRC Amnesty's Committee in respect of the amnesty applications of Brigadier Jack Cronje, Colonel Roelf Venter, Captain Jacques Hechter, Captain Wouter Mentz and Warrant-Officer Paul van Vuuren.

58. Van der Merwe commenced his submissions by seeking to justify the departure from normal policing methods and standards, including that of “minimum violence”. This he said was due to the adoption of “counter-insurgency tactics” normally deployed in a “guerrilla war”. The balance of his submission is a highly selective and mostly unsubstantiated version of the ANC’s struggle against the apartheid order. For example, Van der Merwe insinuates that it was ANC policy to carry out “necklace killings” without sourcing or referencing such policy or instruction. The bulk of Van der Merwe’s claims are little more than conjecture and can be safely ignored. Many of his assertions are patently false. He claims that most anti-apartheid “perpetrators” went “unpunished”. In fact tens of thousands of anti-apartheid activists were rounded up and detained without trial; harassed and tortured. Van der Merwe makes no mention of such draconian punishment. In any event, hundreds, if not thousands were arrested and prosecuted, many on trumped up charges; others on so-called confessions extracted through torture.⁴⁹
59. According to Van der Merwe “militaristic and politically inspired speeches” made it difficult for the security forces to “distinguish” between targets which would “normally” be “justifiable in terms of the law’ and those which were not. His submissions are replete with statistics of police killings but no statistics are provided of numbers killed by police.⁵⁰
60. Van der Merwe, by implication, suggests that he himself also not distinguish between lawful and unlawful actions. He is not to be believed. Indeed he discloses personal involvement in murder and arson that he sought ‘authorisation’ from the then Commissioner of Police and Minister of Law and Order. It is

⁴⁹ It is estimated that some 30 000 persons were arrested during the states of emergency in the 1980s. See McKendrick, Brian; Hoffmann, Wilman (1990). *People and violence in South Africa*. Oxford University Press. p. 62. Adriaan Vlok himself admitted on February 12, 1987 that 13,300 people had been detained under the emergency regulations; whereas unofficial estimates ran as high at 29,000.” See: *A History of South Africa*, pg. 253. Many others were charged with treason, sedition or arrested under the Internal Security Act, Riotous Assembly Act, Suppression of Communism Act, General Law Amendment Act and Terrorism Act. The Human Rights Committee estimated the number of detentions between 1960 and 1990 at approximately 80 000, of which about 10 000 were women and 15 000 children and youths under the age of 18 (SA TRC Report: par 91, Vol 2 Ch 3 “The State inside South Africa between 1960 and 1990” pg 186).

⁵⁰ According to the TRC’s Amnesty Report (Volume 6, Section 3, Chapter 1, pg. 186) - members of the security forces applied for amnesty in respect of 550 incidents comprising some 1583 offences. The majority of these incidents were committed by the Security Branch of the SAP. They included 889 killings, 90 instances of torture and assault, 80 abductions, 83 bombings or acts of arson, 138 cover-ups, 44 body mutilation/destruction, 21 disinformation actions, 72 acts of intimidation. These figures are likely to be a fraction of the actual figure since few members of the security forces applied for amnesty.

noteworthy that in his submissions Van der Merwe only discloses his involvement in crimes that were already before the TRC – and which he himself also sought amnesty. He could have disclosed his role as co-conspirator in the attempt to murder the Rev. Frank Chikane as well his responsibility for other serious crimes. Rather than come clean, he chose to conceal his true role and that of other senior officers and politicians. Indeed he did not even bother to reveal the pernicious practice of the SAP and SADF in eliminating political opponents through poisoning and other devious methods.

61. The memorandum of the former police commissioners is little more than a high level and skewed version of the history of the police. An attempt is made to paint the police as innocent bystanders “caught in the middle” of political conflict. In this regard Van der Merwe’s claim that the police merely got “caught up in the middle” of phenomena such as the pass law system cannot be taken seriously. The police, with very few exceptions, were willing and enthusiastic enforcers of the apartheid system. In Van der Merwe’s own words his forces went the extra mile on a day and night basis often committing brutal excesses for the greater cause.
62. Van der Merwe offers no consideration of police atrocities, such as the massacre of some 60 unarmed civilian protesters, most of whom were shot in the back. Nor does he consider the reaction of black people to such outrages.
63. Van der Merwe attempts to create the impression that crimes committed by the police from the 1960s onwards could be explained by the so-called “undeclared war”. Indeed he goes so far as to claim that for the police it was a question of “kill or be killed”. This is errant nonsense. The law always provided for legal protection for police who reacted with deadly force when their lives were actually being threatened. However, Van der Merwe is not referring to the legitimate use of deadly force. He rather suggests that premeditated and meticulously planned crimes such as murder and abduction could be justified by the “kill or be killed” view. It is a plainly disingenuous claim. Other claims that such actions may have been warranted because of South Africa’s strategic role in the cold war and its rich mineral resources do not merit comment.
64. Van der Merwe’s recurring refrain of a blurring between combatants and non-combatants has been dealt with elsewhere. In the case of Van der Merwe, Vlok and other senior officers such an excuse can never be justifiable. These were not persons caught up in the heat of battle who had to make split second decisions. They could easily discern between peaceful activists and armed opponents. Yet

they planned and condoned ruthless crimes against unarmed civilians for no other reason than such persons played a role in the political struggle against apartheid.

65. Van der Merwe and the other former police commissioners claim that they are “morally obliged to accept collective responsibility” for acts committed by police members even though “most of the said acts... did not occur with our afore (sic) knowledge and in some cases may have occurred against our expressed instructions”. No attempt is made by the Commissioners to provide any detail in respect of acts carried out with their knowledge and in compliance with their instructions vis-à-vis conduct not so authorised or within their knowledge.
66. While extensive justifications were provided no regret was expressed for their personal conduct which caused countless atrocities and considerable harm. No truth was supplied to assist truth commission investigators solve many outstanding serious crimes, including murders and disappearances.

PLEA AND SENTENCING AGREEMENT

67. A plea and sentencing agreement in terms of section 105A of Act 51 of 1977 was entered into between the pardon applicants and the NPA in June 2007. It was subsequently confirmed by the High Court (Transvaal Provincial Division). This document was attached to the applications of the pardon applicants, but not supplied to the Coalition by the DoJ.
68. In the agreement it is noted that the victim, the Reverend Frank Chikane, was consulted and that it was “extremely important for him to have the true facts surrounding the attempt on his life disclosed”. Rev. Chikane did not oppose the agreement, presumably on the basis that the true facts had been disclosed. Thin details of the crimes were provided under the heading “(iv) THE CRIME”. Indeed nothing more was disclosed than what was revealed in this pardon application. The very same criticism in relation to the failure to disclose can be made. If the motivation behind the plea agreement was to secure the truth such objective was not achieved. The applicants studiously avoided giving any information that could be used by investigators and prosecutors. Alarming, the prosecutors concerned appeared to display equal studiousness in not pursuing such truth.
69. Under the heading “Aggravating Circumstances” it was confirmed that Van der Merwe and the others refused to disclose the truth until it was for their own benefit, At all material times, before the TRC and in relation to a criminal investigation, and

notwithstanding request, the pardon applicants refused to co-operate and disclose basic truths. When it was for their particular advantage, they disclosed half truths for purposes of securing lenient treatment in the plea agreement and for purposes of applying for a special pardon. The facts disclosed in the plea agreement did not assist with further inquiry – and indeed the NPA took the allegations no further. This was notwithstanding that the allegations included the compiling of a hit list of civilians for elimination.

70. The claim under “Mitigating Circumstances” that Vlok and Van der Merwe assisted the State since the State had no evidence against them is patently disingenuous. If they had not come forward the other accused would have disclosed that their actions were not private frolics and were in fact authorised through the command structure. Vlok and Van der Merwe had no choice but to come forward.
71. The balance of the mitigating circumstances is equally unconvincing. The pardon applicants raised similar claims in their pardon applications and these have been dealt with elsewhere in these submissions.

DECLARATION OF M C W GELDENHUYS

72. Michael Christian Wilhelm Geldenhuys was the commanding officer of the Security Branch between 1974 and 1978 and then he was the Commissioner of Police between 1978 and 1983. He provided a statement in support of the pardon applications of Van der Merwe, Vlok and the other pardon applicants since the application form *“requires confirmation by a political organisation/ institution/ body/ liberation movement of certain particulars relating to such applications...”*
 - 72.1. Geldenhuys concedes that the crime in question took place after he had retired as Commissioner. **Indeed the plot to murder was hatched some 5 years after he had retired from the SAP and the attempted murder took place 6 years thereafter. He was accordingly in no position to confirm the relevant facts.**
 - 72.2. The pardon applicants could easily have approached another officer who attended the 1987 meeting at the SADF Headquarters during which the conspiracy to murder was hatched. Such a person or persons could have confirmed the relevant facts. Since the applicants were apparently doing little more than passing on instructions to murder, they also ought to have approached persons who served in the very structure or structures from which such instructions and/ or authority emanated. They preferred however

to put up an 'organizational' individual who had retired from the Force half a decade before the events in question transpired; and who would be in no position to confirm anything of relevance. Their reasons for doing so are transparently clear. They wished to avoid disclosing any facts that would lead to the real truth. In particular **they wished to avoid disclosing any information that might expose any other colleagues in the then military, police, State Security Council and cabinet to charges of murder or conspiracy to murder, kidnap and the like.**

- 72.3. So Geldenhuys in his declaration does nothing more than trot out a warped high level and general perspective of the prevailing political situation of the 1980s, reminiscent of the propaganda dished out by apartheid era spokespersons. **He is not however able to confirm a single fact alleged by the pardon applicants in relation to the actual plot to murder. Nonetheless the RG dutifully accepted the Geldenhuys 'confirmation', and in so doing contravened its own guidelines.**
73. The Geldenhuys declaration is in any event specious and nonsensical.
 - 73.1. He speaks of the conflict being characterised by acts of terror, sabotage, killings and mob violence. **Nonetheless he does not attribute any such dastardly deeds to Chikane, which might have warranted his extra-judicial execution.**
 - 73.2. Curiously Geldenhuys adds "mass mobilization" to this list as if political mobilisation can be equated with killings and acts of terror. **This slip is however revealing. Those who engaged in mass mobilization, no matter how lawful and peaceful qualified for extra-judicial execution.**
 - 73.3. He notes that political leaders exhorted their forces to "*greater heights*" and that the "*statutory forces were thus required to adapt the methods and techniques which are normally employed in conventional warfare....*" **This exhorting appears to justify the murder of unarmed and defenceless civilians.** It appears to have escaped Geldenhuys that such crimes are not only domestic crimes but also war crimes and crimes against humanity. In particular he does not allege that Chikane himself was engaged in warfare that might justify his elimination.
 - 73.4. Geldenhuys attempts to provide **excuses** for the attempted murder by speaking of the '*blurring*' between "*combatants and non-combatants*,

between legitimate and illegitimate targets and more importantly between acceptable and unacceptable methods... He does not explain how senior officers (many with strings of university degrees) confused the role of a non-violent churchman with so-called “terrorists”. He attempts to mitigate such actions by reminding that Security Branch members had to work “day and night” in a “shadowy and often murky” world; which often resulted in miscommunication; and where “mere survival became paramount”. He does not explain how such exertions justified the murder of a churchman; nor does he explain how their very survival was threatened by Chikane. **In particular there was no miscommunication in respect of the instruction to kill Chikane. Indeed on this score the pardon applicants are all clear that there was an unambiguous instruction to murder him.**

74. Without providing a shred of evidence, Geldenhuys then attempts to paint the building that housed the SACC, known as **Khotso House**, as a hotbed of violent criminality.

74.1. He laments the fact that notwithstanding the police having “specific information regarding illegal activities” they were “powerless” to act lawfully since their informers would apparently not appear in court for fear of reprisals. **The claims of Geldenhuys fly in the face of the facts.** Hundreds of criminal trials took place involving ANC, UDF and other suspects throughout the 1980s in which hundreds of informers testified.

74.2. If in fact the police had specific information that explosives and weaponry were stored in the building, as alleged by Geldenhuys, they would not have hesitated to raid the building, by force if necessary. Indeed security branch raids of Khotso House were routine.⁵¹ In the book titled “*Fault Lines: Journey into the New South Africa*”, Security Branch Warrant Officer, Paul Erasmus, revealed that “**Khotso House raids were so frequent that they became boring**”.⁵² He went on to describe them as “stationary raids” because they

⁵¹ By way of example in 1985 Security police raided Afrapix offices in Khotso House and scores of other anti apartheid organisations premises around the country. See: <http://www.sahistory.org.za/arts-and-culture/timeline-afropix>. See also: <http://www.gettyimages.com/detail/news-photo/black-policemen-white-troops-prob-during-raid-on-khotso-news-photo/50583741>

⁵² David Goodman, *Journey into the New South Africa*, University of California Press, 1999. See page 105. See: http://books.google.co.za/books?id=MyImEllmQsgC&pg=PA50&lpg=PA50&dq=raiding+of+Khotso+House+Paul&source=bl&ots=aT2vP_imZR&sig=lv1qo7o-u7d5Dk90utAJWgnltO4&hl=en&sa=X&ei=XM5TT6iNIYbAhAec_OXICw&sqi=2&ved=0CDQQ6AEwAw#v=onepage&q=raiding%20of%20Khotso%20House%20Paul&f=false

were “not going in there with any specific purpose” but rather to “*steal as much stationary as possible*” simply to “*harass and disorganise*”.

- 74.3. So the Security Branch had free, easy and frequent access to the premises of the SACC and yet found nothing incriminating, let alone explosives. They had to resort to seizing “*dictionaries and telephone books and check books*”. **The supreme irony is that the only explosives ever to find their way into Khotso house were planted there by Security Branch members themselves on the direct instructions of Van der Merwe and Vlok.**⁵³ The subsequent detonation completely destroyed the building.
75. Geldenhuys then resorts to the postscript of the Interim Constitution as a further reason why the 5 applicants ought to be pardoned. The postscript does speak of the “*need for understanding not vengeance*” and provides for a limited amnesty in respect of crimes associated with a political objective.
- 75.1. **Geldenhuys appears to overlook the glaring fact that in order to achieve “understanding” and “ubuntu” there was a need for truth.** Indeed the TRC Act which gave effect to the postscript placed the truth as a central precondition for the granting of an amnesty.
- 75.2. One of the reasons why the Constitutional Court upheld the amnesty was because it was premised on the full disclosure of the truth that was so desperately needed by victims and the nation.⁵⁴ The truth requirement in the special pardons process was also upheld by the Constitutional Court as a fundamental precondition.⁵⁵ **Deceit, fabrications and half truths destroy the notions of understanding and ubuntu. That is precisely what Geldenhuys and the 5 applicants have done by persisting with their deceptions and falsehoods.**
76. The claim by Geldenhuys that Vlok and the others “*did everything possible to sustain the TRC process*” is, with respect, errant nonsense. It has been amply demonstrated above how Vlok and the pardon applicants adopted a highly selective approach to truth and reconciliation. **If indeed they were doing everything possible to assist the TRC process – they would have applied for**

⁵³ <http://www.sahistory.org.za/dated-event/police-head-admits-khotso-house-bombing>;
<http://www.sabctrc.saha.org.za/tvseries/episode20/section2/transcript1.htm?tab=glossary>

⁵⁴ Judgement of Mahomed DP in *Azanian Peoples Organisation (AZAPO) and others v. President of the Republic of South Africa and others*; (CCT17/96) 1996 (8) BCLR 1015; 1996 (4) SA 672; [1996] ZACC 16 (25 July 1996); at paragraphs 17, and 18

⁵⁵ *Albutt v Centre for the Study of Violence & Reconciliation* 2010 (3) SA 293 (CC) at par 59 – 61, 65, 67 and 70 – 72.

many more amnesties; and they would have disclosed the full truth in this matter and many others.

77. Geldenhuys concludes by claiming that the requirements of the TRC Act insofar as they related to amnesty were “**excessive and demanding**”. He does not offer any explanation in support of this bald claim. Presumably he may have been justifying why Vlok and the others did not apply for amnesty in respect of this case and others.
- 77.1. His argument is completely undermined by the stark fact that Vlok and Van der Merwe did apply for amnesty in cases when it was convenient, or perhaps more accurately, imperative for them to do so. In those cases the provisions did not seem to be excessive and demanding.
- 77.2. What was excessive and demanding in this matter and others was the need to disclose the truth of their own roles and what they knew about the involvement of others. Since back in the 1990s it appeared that nobody had to answer for these crimes they preferred to keep these matters concealed from the nation.
- 77.3. Geldenhuys asserts that a pardon to Vlok and company would honour the spirit and essence of the Interim Constitution. This is not correct. **A pardon on the basis of the lies and deceit offered by Vlok and his co-conspirators would utterly betray the spirit and values encapsulated in the postscript to the Interim Constitution.**

DECLARATION OF ROELOF FREDERIK BOTHA

78. Roelof Frederik Botha (“Botha”), former Minister of Foreign Affairs, purports to confirm in his declaration that the offences committed by Vlok were aimed at achieving the political objectives of the then government. However, in relation to the specific political objectives of the applicants and any organisational approval for the elimination of Chikane he refers to the application of Van Der Merwe. He does not however confirm anything in that application.
79. Much of Botha’s declaration deals with his efforts to secure a general amnesty for all who had committed criminal offences. He also refers to indemnities issued under the Indemnity Act 35 of 1990 without mentioning that this discredited law was repealed in 1995.

80. Botha claims that he verified his information from “database, newspaper archives and personal knowledge”. However he does not attribute any specific information to such sources, nor does he identify the database or newspaper clippings he is referring to.
81. He claims that it would be in the public interest for Vlok and the others to be granted a pardon. In support of this claim he refers to his statement. His statement only deals with the Indemnity Act, his discussions about a general amnesty with Cyrus Vance, Thabo Mbeki, F W de Klerk and Kobie Coetsee. He also speaks about his role in Namibia. His declaration is in fact about himself and not about the subject matter in question, namely organisational approval for the murder of Chikane.
82. Botha’s only reference to the offence in relation to Chikane is made in passing. He mentions that many years later he heard of the attempted murder and the subsequent plea-agreement.
83. Botha adds in support of his ‘public interest’ contention that all stakeholders agreed that there should be an amnesty and he quotes extracts from the epilogue of the Interim Constitution. He does not disclose or comment on the fact that pardon applicants had ample opportunity to apply for amnesty in respect of this and many other cases. They spurned this opportunity. They did not apply for amnesty in relation to the Chikane case and indeed chose to conceal such details from the TRC.
84. Botha is transparently disingenuous when he suggests that Vlok and the other applicants “associated themselves whole heartedly” with the aims of the TRC and “did everything possible to sustain the TRC-process”. If they had such interests at heart they would have disclosed the full truth at the time, including the details of the Chikane case. In fact then, as now, they acted purely out of self-interest.
85. Botha concludes by stating that the “event of feet washing confirmed my conviction of the person of Adriaan Vlok”. Since Vlok’s conduct rests on half-truths and deceit it is little more than political theatre. If Vlok was in fact living up to his claimed convictions he would not persist with his cover-up of details relating to the orchestration of massive state sponsored crime.

DOCUMENT: POLITICAL BACKGROUND – FORMER SECURITY FORCES

86. The one page recommendation to the President was accompanied by a document titled *“Political background – Former security forces”*. No explanation is offered as to what this document is doing there or what purpose it is meant to serve. The document is undated and it is not disclosed who the author is. However since it was attached to the recommendation it can be safely assumed that it was either authored by the RG or approved by its members.
87. The document was presumably provided to place the context in which the attempted murder occurred into its proper perspective. The title of the document is something of a misnomer. **The one and only source of information appears to be the Van der Merwe application itself.** Indeed much of the 2 page document is nothing more than a paraphrasing or a summary of the version alleged by Van der Merwe. **No independent sources are relied upon. The document discloses no analysis, no questioning and no reasoning. It simply accepts everything alleged by Van der Merwe, without question.**
88. The document claims that the determination of the RG on the question of political motivation was *“eased by the fact that confrontation between the State and the Liberation Movements is fairly well defined”*. Curiously the document then goes on to deal with the approach of the RG in various situations that do not apply to the facts of the application of Van der Merwe and company. It is not clear whether these points were made to somehow justify the stance taken in this matter.
89. The document asserts that the RG was *“extremely cautious”* when so-called *“freedom fighters”* claimed to have *“acted in that capacity”* to kill civilians. **The same concern is not expressed in relation to the killing of civilians by security forces purportedly for political purposes.** Indeed the Chikane matter is a case in point. Although the RG raises this concern in relation to “freedom fighters” it does not bother to discuss it in relation to this application. **No analysis is offered as to whether it was appropriate or acceptable for the all powerful security forces to murder an unarmed and defenceless civilian.**
90. The document then proclaims that the *“RG did not accept at face value statements that murders and robberies were committed with the political objective of undermining an unjust system.”* **It seems however that the converse did not necessarily apply to those defending an unjust system.** In relation to the security forces it appeared that the only concerns that would have prevented a pardon would be where the crimes were motivated by *“personal interest or gain or*

[] *racism*". It is evident that in relation to the senior security personnel in this matter, the RG was more than happy to accept "*at face value*" all that they claimed, even when such claims were patently fanciful.

91. It appears that the mere fact that there was a well known conflict between the state and the liberation forces was sufficient to justify the political motivation claimed by the applicants. **No consideration was given as to whether the offence in question was proportional to the claimed political objective; and whether in the light of all relevant circumstances it was appropriate to recommend a special pardon.** These considerations include:

91.1. The **particular objective** of the applicants, which was to neutralize a civilian who was an effective campaigner against the apartheid system. He was a leading member of the church and was a vocal but lawful and non-violent opponent of apartheid.

91.2. The **nature of the offence** in question, which was attempted murder by poisoning. Poisoning can produce an excruciating painful and slow death process. It was the preferred choice of the killers as they wished to give the impression of a natural death. The character of this offence places it into an **egregious category**.

91.3. The offence was orchestrated by a cabinet minister and high ranking police officers who **could have resorted to non-lethal, non-violent and lawful means to counteract the work of the activist in question**. This fact aggravates the circumstances of the perpetrators.

91.3.1. During apartheid times senior police officers had a **plethora of forceful legal tools at their disposal**. During states of emergency the police were even able to detain individuals without charge or trial on the subjective belief that such persons had infringed emergency regulations. Thousands were detained on the flimsiest of grounds.

91.3.2. Other far reaching powers included the prohibition or banning of persons to their homes or neighbourhoods; preventing them from communicating with others; and a total prohibition on publishing. Such persons could not even be quoted in the media.

91.4. The perpetrators in question were in positions of great influence, authority, leadership or command. In the facts of this case, all the perpetrators, but in

particular Vlok, Van der Merwe and Smith, **exercised sufficient authority to prevent the attempt to murder from proceeding but failed to do so.**

91.5. An additional aggravating factor is the fact that the perpetrators in question **were guardians of the law and were expected to protect the safety of civilians, particularly unarmed and law abiding civilians.** They were meant to uphold the law, not violate it.

91.6. These facts, which cannot be seriously disputed, point to the inescapable conclusion that **the actions of the applicants were entirely out of proportion to their claimed political objective.**

LETTER FROM JUSTICE MINISTER TO PRESIDENT DATED 11 DECEMBER 2008

92. This three page letter was addressed from the Minister of Justice to the President. Two and half pages were devoted to summarizing the application form of Van der Merwe, with some details from the other application forms included. Since no questions were raised it must be assumed that the Minister also accepted that all these facts and claims to be correct.

93. A mere 3 sentences on page 3 of the letter constitute the apparent reasons of the RG, namely that the RG was satisfied with the *“Applicant’s own admission”* that the offence was political in nature. The other 2 sentences refers to views of the RG **that were not disclosed to the Coalition**, namely that

93.1. The offences committed by the security forces *“qualify as war crimes”* but that a number had been *“acquitted albeit the fact that there was a lot of evidence of wrongdoings”*.

93.2. Although the RG was satisfied that the offence had a political goal, *“they were racially oriented to an extent”*.

94. In the first place it seems apparent that the DoJ has not released all the documentation relating to this case (aside from those already listed in the letter to the DoJ). The matters mentioned above are clearly material to the considerations of proportionality. The DoJ must disclose these minutes or documents.

95. Secondly the averments are **disturbing** as:

- 95.1. it seems that the RG and DoJ take the incoherent view that while war crimes are serious, the fact that some perpetrators were acquitted, notwithstanding much available evidence – somehow warrants a special pardon in this particular case. **It appears that the failings in the criminal justice system are being put up as a ground for pardon.** Needless to say the averment is wholly irrational.
- 95.2. Finally, the concession by the RG that the crimes of the applicants “**were racially oriented to an extent**” **directly contradicts their claim** in the preceding document (and in the RG’s final report) that they did not recommend any criminal for pardon whose crime was racially motivated.

CONCLUSION

96. The relevant questions in respect of these applications for pardon may be answered as follows:

- 96.1. Have the applicants made full disclosure in relation to the facts of their offence, inclusive of relevant facts such as who issued commands?

No. Applicants have not disclosed sufficient relevant facts to warrant a special pardon. Instead of disclosing the relevant facts they have provided lies and deceit. On this count alone the application must fail.

- 96.2. Were the offences politically motivated? In particular did the claimed political objective factually exist at the time; and if so, was such political objective appropriate for purposes of recommending a special pardon?

Yes. However this fact on its own does not warrant a special pardon. Even if applicants were pursuing a ‘legitimate’ political objective, in this case, resisting the liberation struggle, they still have to satisfy the full disclosure and proportionality tests.

- 96.3. Was the offence proportional and necessary for purposes of achieving the stated political objective in the prevailing context?

No. Firstly, the applicants had a vast range of legal powers and procedures at their disposal which they could have used to limit or counteract the alleged activities of Chikane. Secondly, their target was a man of peace and non-violence making murder a wholly

disproportional response. Thirdly, the killing method chosen, which would have induced a slow agonising death, was totally disproportional to the political objective pursued. Fourthly, the perpetrators were meant to uphold the law and protect civilians, not murder them. Finally, all were in a position to stop the attempted murder from going ahead but none did.

- 96.4. What are the implications of issuing each special pardon, and do such consequences militate against the grant of pardon?

A granting of pardon in these cases will seriously undermine and retard national reconciliation since the applicants have specifically chosen to deceive South Africans and deny the nation important truths of South Africa's past.

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE
TO STOP THE INVESTIGATIONS OR PROSECUTIONS OF
TRUTH AND RECONCILIATION COMMISSION CASES**

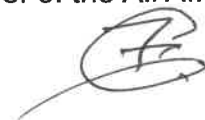
AFFIDAVIT

I, the undersigned,

FRANK CHIKANE

do hereby make oath and state as follows:

1. The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.
2. I am currently an Emeritus Pastor of the Apostolic Faith Mission of South Africa (AFM); a Chair of the South African Chapter of the Anti-Apartheid Movement (AAM) on Palestine; a Co-Convener of the African and African Diaspora (AAD) Conference; and a visiting Adjunct Professor in the Wits School of Governance, University of the Witwatersrand.
3. I am a former international President of the AFM; a former Moderator of the Churches Commission on International Affairs (CCIA) of the World Council of Churches (WCC); a former member of the All Africa

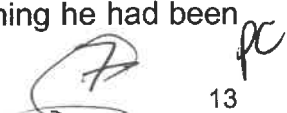


was administered. It was then that tests were done and the results thereof led to some suspicion that the South African apartheid security police had been responsible for administering the poison to my clothes at the airport in Johannesburg.

37. After I returned to South Africa from the United States, I appealed to the apartheid government and the public in general to trace and identify the perpetrators of the dastardly act. By that time, I had information that there were two to three laboratories in South Africa where the chemicals or biological substances that were used were produce and demanded that these be disclosed. However, although the police took a statement from me, nothing happened.

38. Thereafter, whilst the concept of setting up the TRC was being discussed, I seized on the opportunity to call on and encourage those who were involved in or had information about my poisoning to take a bold step and make disclosure. I indicated that I had no interest in having them prosecuted. What was important was the truth about who had carried out the operation. I took the matter further based on my Christian faith: if they were willing to confess their deeds I was prepared to forgive them.

39. Sadly, I must record, no one came forward except a Paul Erasmus who revealed in a newspaper article that he was responsible for putting me on the death list of the apartheid security police, on the basis of instructions from his seniors. He said he had joined the police when he was about 18 and believed everything he had been

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all the information I now had at my disposal, it became clear that the evidence was building up against the perpetrators of this callous act which could lead to their arrest and charges being preferred against them.

44. Thereafter, with the help of the NPA I addressed letters to the three police officers involved asking them to disclose what they knew. I reasoned that I should use the NPA because it was in contact with the lawyers of the perpetrators, and because I did not want them to say that I had threatened them.
45. In May 2003, through the media I wrote an open letter to "fellow South Africans" in which I said that "telling the truth and giving information about what happened to victims and those who disappeared or died during the days of the apartheid system is critical to the process of reconciliation, healing and transition to a democratic society". I also made the point that those who were "still imprisoned by their past deeds should come forward with information so that we may proceed with the building of a new, more humane and peaceful South Africa for all South Africans." In addition, I made public my offer to "waive my rights to sue for damages or seek prosecution" to make it easier for perpetrators who had "failed to take advantage of the TRC process to acknowledge culpability or involvement in apartheid inspired attacks on me."

Handwritten signature and initials in black ink, consisting of a stylized 'Z' inside a circle followed by the letters 'R' and 'C'.

49. For these reasons, they preferred their original position, which they had presented to the NPA and the political leadership, particularly FW de Klerk and Thabo Mbeki, namely a general amnesty. However, they acknowledged that this was a non-starter as it had been rejected even before the TRC processes.
50. Another concern that they had was that any disclosure by one person about a particular case was likely to implicate others and one could then be forced to be a witness in other cases that may be brought to court. They were worried about exposing or giving evidence against one of their own. One could not miss the point that there must have been a pact between the operatives that they would not sell out any of their own or expose them to risk. This illustrated to me the multiple levels of lying and denial in place. This, in my view, was to ensure that the line of responsibility for such processes as my poisoning was not traced to the Cabinet, including then President P W Botha, who chaired the National Security Council.
51. In the result, as often happens, the sad reality is that it is usually the foot soldiers who are the first targets when information comes to light about specific gross violations of human rights. This was what initially also happened in this case: It was Smith, Otto and Van Staden who were the first targets. Be that as it may, however dastardly my poisoning, I have to respect Vlok and Van der Merwe for not abandoning their foot soldiers, like some of their colleagues did. At a critical moment when the three police officers were at risk, Vlok and

Van Der Merwe came out of the woodwork, took off their masks and moved from their “strategic lies” (to protect themselves and their foot soldiers), to declaring solidarity with their foot soldiers. They admitted what they had denied all along and were prepared to be charged along with their underlings. It is for this reason that they started the negotiations with the NPA, failing which, with myself. This is in stark contrast with the command of the apartheid South African Defence Force, who were directly and primarily responsible for this poisoning project.

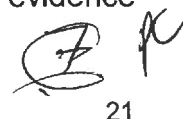
52. My discussions with Vlok and Van der Merwe turned into a kind of negotiation process about how Smith, Otto and Van Staden could respond to my call without opening themselves to prosecution. Their lawyer, Jan Wagener, was also involved.
53. However, parallel to these discussions was an on-going dialogue between Vlok, Van der Merwe and Wagener, on the one hand, and the NPA, particularly Advocate Ackermann, who was responsible for the case, on the other. There was also a raging debate between government and the NDPP about a prosecution policy to deal with the unfinished business of the TRC cases (Principles for Prosecution of TRC Related Matters) in line with President Mbeki’s speech in Parliament.
54. I have detailed the various steps I took to get to the truth to illustrate how difficult it is to unearth the truth. I turn now to the charges that were preferred against the Accused.



59. I turn to summarise my interactions with Advocate Ackermann who made what was a difficult and painful process even more painful.

Dealings with Ackermann

60. As regards the prosecution of the Accused, I had several discussions with Advocate Ackermann. I record that I found that his approach was a punitive one and not within the spirit of the post-TRC processes and the President's call, including the muted prosecution principles related to the unfinished business of the TRC. In contrast, Advocate Ackermann's approach was a straightforward prosecution that would make me a witness against the perpetrators.
61. My response was that I was not interested in a prosecution for the sake of a prosecution. I was seeking the truth about my poisoning. In addition, I had pronounced publicly that I had no interest in sending the perpetrators to jail and was ready to forgive them. Moreover, at that stage, they had already disclosed much of what I needed from them through Vlok and Van der Merwe and Vlok had already asked for forgiveness from me. Later he went the extra mile and even washed my feet, on 3 August 2006, and presented me with a New Testament Bible in which he had asked for my forgiveness.
62. The approach set out above, which I conveyed to Advocate Ackermann, seems to have caused him to conclude that I was a hostile witness. He went as far as threatening me with section 205 of the Criminal Procedure Act to force me not only to give evidence



against the Accused but to disclose all the information Vlok and others had given me. This is where our discussion ended. The section 205 threat reminded me of the old apartheid days. It was like putting salt on my wounds. I dared him to try it and see whether or not he would succeed where the apartheid regime had failed.

63. At this stage, I knew I was just a pawn in a bigger scheme of things.
64. The consequences of this breakdown were dire, including factual errors in the plea and sentencing agreement. Views were attributed to me without any supporting affidavit to ensure their accuracy. I have set these out in my letter to Minister Mabandla, in which I noted, among other matters, the following: the NPA officials charged with handling my case were simply the wrong people to deal with post-TRC matters; my case was used to fight battles within the NPA and between the NPA and the Government about the guidelines for dealing with post-TRC cases; Mr Ackermann entered into an acrimonious argument with me about Government's approach to post-TRC cases, which he was radically opposed to; Advocate Ackermann's threat to use section 205 against me; I was not consulted about the Plea Bargain Agreement, although it reflected that I was "satisfied" with the agreement; the agreement contained errors, some quite embarrassing; and matters that ought to have been probed were not probed to gather more information.
65. I also find it necessary to record the following. While my struggle with the NPA was going on, a campaign was launched from other



quarters of government to stop the case without considering my enduring need for a recorded confession, especially an official court record. Besides, there are still too many, mainly whites who doubted that a government that claimed to be Christian, could commit such an inhuman and treacherous act. Many of those who came to confess to me and asked for forgiveness said: they did not know that the government had committed such acts in their name; and that their worst sin was that even when it was made public that the government had committed such inhumane acts, they did not believe it.

66. I felt caught between three parties: those who perpetrated gross human rights violations against me; the NPA officials; and government officials who held conflicting views.
67. Throughout these processes I interacted with the NDPP from time to time. I also sent the letter to the Minister of Justice to raise my concerns at the end of the case. I also kept the President informed about what I was doing without involving him in the matter.

Conclusion

68. I have on numerous occasions noted the trauma that has been caused to me not only by the apartheid state but also by the manner in which the case against the perpetrators of a heinous act against me was dealt with.

PC 

69. As a victim of such an act, I submit that I was entitled to be treated with empathy and understanding. After all, I had suffered enough at the hands of my apartheid tormentors.
70. I hope that what I have set out in this statement is taken note of and that other victims of apartheid abuses are not put to a second round of torment.
71. The South Africa that we have created, with all its imperfections, owes all of us at least that. That is a value that members of the security cluster, especially the SAPS and the NPA, must instil in its members.



DEPONENT

I CERTIFY THAT the deponent has acknowledged that he knows and understands the contents of this affidavit which was signed and sworn to before me at on this ^{Midrand} 28th day of April 2026 under compliance with the Regulations contained in Government Notice No. R.1258 dated 21 July 1972 (as amended).

PC

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS
REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES
(TRC CASES INQUIRY)**

HELD AT:

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street
Newtown, Johannesburg

BEFORE:

COMMISSIONERS:

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)
Adv Andrea Gabriel (SC)

EVIDENCE LEADERS:

Adv Ishmael Semanya (SC)
Adv Vas Soni (SC)
Adv Fana Nalane (SC)
Adv Nompumelelo Seme
Ms Baitseng Rangata

REPRESENTATIVES

Adv Yanela Ntloko- NPA representative
Adv T Masuku (SC) (for Adv Menzi Simelane)
Adv Vivian Rikhotso (for Adv Menzi Simelane)
Adv Bridgette Nthambeleni (for Adv Jiba)
Adv Nwabisa Mtshizana (for Ex-NDPP's Officials)
Adv Irene de Vos for President Cyril Ramaphosa
Adv KD Moroka (SC) – DoJ representative
Adv Tlotlego Tsagae (DoJ representative)
Adv Motlalepule Rantho (for SAPS)
Adv Varney (SC) – The Calata Group
Adv D Pillay – The Calata Group
Mr Jao Venter – The Calata Group
Mr Sipho Tlhaole – The Calata Group
Ms Vuya Nako– The Calata Group

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and the public in general to trace and identify the perpetrators of the dastardly act. By that time, I had information that there were three laboratories, SUMU and UIUF, I have said before. However, although the police took statements from me, nothing happened.

ADV SONI: Can I ask you, Reverend, you say you made an appeal to the public to come up with facts. How was that appeal made?

REV CHIKANE: Well, it was a press conference, I think, when I
10 arrived, because it was a major public issue. And I made an appeal, I was saying those who are involved should come out and say it. Those who know the laboratories. We had our own way of investigation, but we are not government, so it was, there is limitations. We could not ask people any questions, but you had to go the soft approach. But there is nothing, nothing happened.

The police took a statement and did nothing.

ADV SONI: And thereafter, paragraph 38, you indicate further steps you took.

REV CHIKANE: Ja

20 "38. Thereafter, once the concept of setting up the truth commission was being discussed, I seized an opportunity to call on and encourage those who were involved in or had information about poisoning to take a bold step and make disclosures. What was important was the truth

about who had carried out the operation. I took the matter further based on my Christian faith and said if they were willing to confess their deeds, I was prepared to forgive.”

Sadly, (intervenes)

COMMISSIONER KGOMO: Sorry, Reverend, can you perhaps give us the year around when this, this happened?

REV CHIKANE: In terms of at the beginning of 38, whilst the concept of setting up the TRC was being discussed, I took that opportunity, so
10 it would be before, because I arrived back, it would be around 89, I think. 1989.

ADV SONI: Yes, you left for Namibia in April 1989.

REV CHIKANE: Yes, yes. And I came back, went to the United States, came back around June/July.

COMMISSIONER KGOMO: Yes, I think that is sufficient.

REV CHIKANE: And ja, and then the press conference happened, immediately, so it was before there, NEC was unbanned and all the other liberation movements. It might be possible, but some of what I am speaking to in 38 combines the before and after, but it really does
20 not matter. The point is that I made an effort.

The advantage I had, of course, which is what you were talking about, is that I was a public figure. I would say to the press conference, and it would be published, an ordinary person would not have had that possibility. I also do say in other writings that if I was not having the profile I had, I would have died in Namibia. And I did

would not have direct evidence, but I mean, he was the key person who was, if you tracked any perpetrator, you ended up with Wagner.

And so he was part of the strategy to make sure people are not, their people are not prosecuted. And I knew a lot about it, but I mean, I do not have evidence. Intelligence is not evidence. It is going to produce evidence. And so my approach was use the NPA. And I now know that there was a debate amongst them when they wanted to charge those policemen, I think it would have been 2004.

ADV SONI: November 2004.

- 10 REV CHIKANE: Ja, around 2004, my worry was they would charge them to release them. Ja, you see, if the old order charges them, people who were in the old order, they could charge them to release them. So the prosecutor could go and say, this is the only evidence we have, and then they get a righted. I was not interested in their last operation to charge them. I wanted to make sure we get the information from them. So for me, it was not, some people think I resisted that they be charged, no. I wanted them to be charged because even if I had enough information, let us call it intelligence information, I could not go to public and say these people poisoned
- 20 me and they will sue me. I wanted, when they go to court, they must put it on record.

Now I can talk about it because it is in the plea agreement document. That was my target, and I was worried about the rush and consent that I would get all the information. And I think my approach worked because I got the information.

talked to Commissioner Van der Merwe, the former Commissioner Van der Merwe.

REV CHIKANE: Ja.

ADV SONI: One of the pieces of evidence that was given here was that Commissioner Van der Merwe had indicated that he had a docket in respect of the members of the ANC-MDC relating to the command structure in Lusaka.

REV CHIKANE: Ja.

ADV SONI: Did Commissioner Van der Merwe ever say that to you?

10 REV CHIKANE: No. I think Commissioner van der Merwe and Vlok were there to plead. I do not know why they thought I can move the whole system to their favour. They were pleading for a way of getting over this without their foot soldiers going to jail. I think that is what they were talking to me about, not the strategy about ANC, the generals and all that. I may know about those conspiracies on the other side, but they were not discussed in my case.

20 So they were very guarded. I pressed hard to get the truth from them, but they were very guarded. They wanted a settlement without going to jail. I think that was their determination and when they failed in the NPA, they came to me. But I handled them in a way that they gave me more information without threatening them. My intention was not to fight with them. It is how was I poisoned? How did it happen? Who was responsible for it? And I was able to get the information.

ADV SONI: And neither Vlok nor Van der Merwe said to you at any

REV CHIKANE: With Advocate Ackerman, Ja.

60. As regards the prosecution of the Accused. I had several discussions with Advocate Ackerman. I record that I found that his approach was a punitive one and not within the spirit of the post-TRC processes and the President's call, including the muted prosecution principles related to the unfinished business of the TRC. In contrast, Ackerman's approach was a straightforward prosecution that would make me a witness against the perpetrators.”

Now, I could not be a witness against the perpetrators because I was going to then say what they told me. That is how I then become a witness. So I used the information they get from me to be a witness. It did not make sense to me, because that is the information I wanted in anyway.

“61. My response was that I was not interested in a prosecution for the sake of prosecution. I was seeking the truth about my poisoning. In addition, I had pronounced publicly that I had no interest in sending the perpetrators to jail and was ready to forgive them through Vlok and Van der Merwe and Vlok had already asked for forgiveness from me. Later he went the extra mile and even washed my feet.”

pawn?

REV CHIKANE: Ja, I used my case to precipitate a crisis and achieve their objectives. Ja, that was my feeling. And at the same time, my comrades, some of my comrades were saying, but why are you continuing with this case? There were others who were asking me. I said to them, I have an interest in getting information about my poisoning. That is why ultimately I went to court alone. That is why the book says a long journey. I was alone in that court with a communication officer from the President who chose to accompany
10 me in his personal capacity. The court was full of journalists.

ADV SONI: And none of your comrades?

REV CHIKANE: Ja, no, none of them. Because I think the, at that time, the feeling was that you are taking this matter too far. I said no. I am not interested in sending them to jail. I want them to put it on record so I can use the information. That is what I wanted and I got that.

ADV SONI: Then you talk about consequences in Dyer. Now, you then say you have set out these, I am talking about paragraph 64 now, you say you set this out in your letter to Minister Mabandla and
20 you isolate matters in paragraph 64 that are contained in your letter. Rather than dealing with the summary here, may I ask you, Reverend, to go to the letter which is annexure B to your affidavit. It is the last three pages on that file.

REV CHIKANE: It is Annexure B?

ADV SONI: Annexure B.