

**BEFORE THE JUDICIAL COMMISSION OF INQUIRY APPOINTED TO INQUIRE
INTO ALLEGATIONS CONCERNING EFFORTS OR ATTEMPTS MADE TO IMPEDE,
HINDER OR OTHERWISE PREVENT THE INVESTIGATION OR PROSECUTION OF
TRUTH AND RECONCILIATION COMMISSION CASES**

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

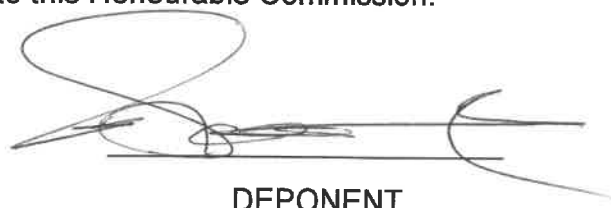
JACOB SKOSANA

do hereby declare under oath and state that:

1. I have already deposed to the main affidavit to the above Honourable Commission.
2. I have personal knowledge of the facts in this affidavit, unless I state or imply otherwise. The facts are true and correct.
3. I depose this affidavit pursuant to the telephonic message relayed to me on the 15th July 2026 by Ms Thembekile Graham, this Honourable Commission's Head of Legal Research and Investigations. The message relayed was to the effect that the Evidence Leaders request that I furnish this Honourable Commission with the draft memorandum I have referred to in paragraph 12 of my main affidavit.

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4. I had not annexed the said draft memorandum to my main affidavit for the reason that the memorandum had neither been considered nor approved by the Director-General at the time or the Minister. I did not have sufficient time to process it to the Ministry prior to my retirement from the Department. It became part of the matters that I handed over to the Department to be considered by my successor, if deemed necessary.
5. In the draft memorandum I had recommended the appointment of a retired judge who would lead a team that would undertake the investigation ordered by the SCA in the *Rodrigues* judgment. The draft memorandum is attached as Annexure JB1. It was my contemplation at the time that the judges suggested in the memorandum or any other judge that the Minister would prefer for the assignment would be formally approached once the Minister had approved the memorandum.
6. I have observed, in paragraph 36 of Minister Ronald Lamola's affidavit he had deposed to this Honourable Commission which I had sight of, that the Minister had attached a memorandum issued under the hand of the Deputy Chief State Law Adviser who succeeded me to the position. The said memorandum, which is marked as Annexure RL6 in Minister Lamola's affidavit, recommended that the investigation be undertaken by an Investigative Panel chaired by a Senior Counsel, which the Minister did not approve. I attach the said affidavit hereto marked as Annexure JB2.
7. I humbly, through this affidavit, supplement the averments contained in my main affidavit and respectfully submit the affidavit to this Honourable Commission.

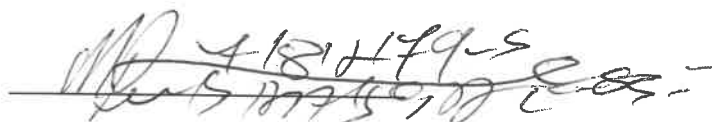


A handwritten signature in black ink, consisting of a large, stylized 'S' or 'R' shape followed by a horizontal line and a small flourish.

DEPONENT

I CONFIRM that the deponent has acknowledged that he knows and understands the contents of this affidavit, that the contents thereof are true and correct, that he has no objection to taking this oath, and regards the oath to be binding on his conscience.

THUS SIGNED and SWORN to before me, at MIDRAND on this 17 day of JULY 2026.


COMMISSIONER OF OATHS

FULL NAMES : DODDAS RAJGOAT

CAPACITY : SGT

ADDRESS : odd snaitz/01276125



JB M.S



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

BRANCH: COURT SERVICES

TEL: (012) 315 1016

MINISTER MEMO

DATE:	4 December 2021	FILE NR:	
TO	MR. R. LAMOLA MP: MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	FROM	ADV JB SKOSANA: DEPUTY DIRECTOR-GENERAL: COURT SERVICES AND POLICY DEVELOPMENT
SUBJECT:	APPOINTMENT OF RETIRED JUDGE TO INVESTIGATE MATTERS AS DIRECTED IN THE JUDGEMENT OF JOAO RODRIGUES V NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS 2019 (2) SACR 251 (GJ)		

1. PURPOSE

The purpose of this memorandum is to –

- 1.1 inform the Minister of a submission received from National Director of Public Prosecutions, for the appointment of a retired Judge to conduct an investigation as directed by the Gauteng Division of the High Court, Johannesburg, in the matter of *Rodrigues v The National Director of Public Prosecutions* delivered on 03 June 2019;
- 1.2 recommend to the Minister consider appointing, from the retired judges below or any retired judge, to conduct the investigation ordered by the court:
 - (a) Judge P Mojaelo, retired former Deputy Judge President on the South Gauteng High Court;
 - (b) Judge Lex Mpati, retired President of the Supreme Court of Appeal ;
 - (c) Judge J Van der Westhuisen, retired Judge of the Constitutional Court.

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2. LEGISLATIVE AUTHORITY

- 2.1 Section 7 of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001) regulates the performance of service by constitutional court judges and judges discharged from active service. The following subsections are relevant for the appointment:

"7(1) (a) A Constitutional Court judge or judge who has been discharged from active

service, except a Constitutional Court judge or judge who has been discharged in terms of [section 3](#)(1)(b) or (c) or (2)(b), (c) or (d), who-

(i) has not attained the age of 75 years must, subject to paragraph (c), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months' service a year, if his or her services are so requested; or

(ii) has already attained the age of 75 years, may voluntarily perform further service, if his or her services are so requested,

if that Constitutional Court judge's or judge's mental and physical health enable him or her to perform such service.

(b) ...

(c) Service as mentioned in paragraph (b), (c) or (d) of the definition of "service" in [section 1](#) may be performed only with the consent of the Constitutional Court judge or judge concerned.

7(2)(b) A Constitutional Court judge or judge who performs service in terms of subsection (1) as contemplated in-

(i) paragraphs (b) to (d) of the definition of "service" in [section 1](#); and

(ii) the proviso to subsection (1)(a)(i) or in subsection(1)(a)(i)), read with paragraph (a) of the definition of "service" in [section 1](#), shall monthly be paid such remuneration as the President may determine.'

3. DISCUSSION

- 3.1 On 3 June 2020 the Gauteng Division of the High Court, in the in the matter between *Joao Rodrigues v The National Director of Public Prosecutions (Rodrigues Judgment)*, dismissed an application by Mr Rodrigues for permanent stay of public prosecution. The matter involved an application for the stay or prosecutions by Mr Rodrigues (applicant), a former member of the Security Branch of the Policy during

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apartheid, who had been charged with the murder of activist Ahmed Timol in 1971. The judgment delivered by Kollapen J (Moshidi J and Opperman J concurring).

- 3.2 In the judgment the court made certain findings regarding allegations of political interference with the NPA in discharging its prosecutorial mandate relating to the handling of the Truth and Reconciliation Commission (TRC) cases were made by the court.
- 3.3 Furthermore, the Supreme Court of Appeal (SCA) on 21 June 2021 dismissed the appeal by Rodrigues for the stay of prosecution and affirmed the High Court's directive that an investigation be held into the conduct of the NPA with regards to the TRC cases. At paragraph [27] thereof the SCA remarked:

"The Full Court rightly recommended a proper investigation into these issues by the NDPP and a determination whether any action in terms of s 41(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act) was necessary."

ANNEXURE "C"

- 3.4 Adv S Batohi, National Director of Public Prosecution, submitted a memorandum to the Minister during 2020 in which she informed the Minister of the Rodrigues Judgment and requested that a retired judge be appointed to conduct the investigation ordered by the court.

Annexure "A"

- 3.5 At paragraph [55] of the Rodrigues Judgment, the court held that *"there can be little argument that the political interference resulted in TRC cases (and one must assume the Timol case) not receiving the necessary attention by virtue investigation that could have led to a decision to prosecute."* The court went on to outline the functions and obligations of the NPA as espoused in the Constitution, 1996 and the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (NPA).
- 3.6 The Court Paragraph [65] directed as follows:

*"It is also for these reasons **that the conduct of the relevant officials and***

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others outside of the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted.

Finally, there must be a public assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC cases will never occur again. In this regard they should indicate the measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution.”

(our emphasis)

High Court Judgment attached an **Annexure “B”**

- 3.7 The investigation ordered by the court will be aimed at establishing of any person inside or outside the NPA has contravened section 32(1) of the NPA Act. The above subsections provide:

32 Impartiality of, and oath or affirmation by members of prosecuting authority

(1) (a) A member of the prosecuting authority shall serve impartially and exercise, carry out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law.

(b) Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.

Further, section 41(1) of the NPA Act provides that –

“(1) Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.”

- 3.8 In as much as this matter has political implications, it remains a human rights issue and the family of the victim and society at large, seeks closure and accountability for what had happened 47 years ago.

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4. RECOMMEDATION

- 4.1 Madam Justice O'Regan, who was initially recommended to undertake the investigation has indicated her unavailability due to prior commitments.
- 4.2 It recommended that Minister consider appointing from a retired judges amongst the following judges to undertake the investigation ordered by the court:
- (a) Judge P Mojaelo, retired former Deputy Judge President on the South Gauteng High Court;
 - (b) Judge Lex Mpati, retired President of the Supreme Court of Appeal ;
 - (c) Judge J Van der Westhuizen, retired Judge of the Constitutional Court.
- 4.3 Further, that the Minister approve the following terms of reference for the envisaged investigation which derive from the judgments of the South Gauteng High Court and the SCA:
- 1. *To, with due consideration to section 178 of the Constitution of the Republic of South Africa and section 32 of the National Prosecuting Act, 1998 (Act No.32 of 1998) (the NPA Act), -*
 - 1.1 *investigate whether any person within or outside the National Prosecuting Authority (NPA) or any organ of state or member or employee of an organ of state has interfered with, hindered or obstructed the NPA in the exercise, carrying out or performance of its, his or her powers, duties and functions on relation to the prosecution of cases emanating from Truth and Reconciliation Commission (TRC);*
 - 1.2 *submits a report and recommendation on steps that must be taken against any person or organ of state who has been found to have interfered with, hindered or obstructed the NPA in the exercise, carrying out or performance of its, his or her powers, duties and functions on relation to the prosecution of cases emanating from Truth and Reconciliation Commission (TRC);*
 - 1.3 *make recommendation regarding an appropriate oversight mechanism to*



ensure that the prosecution of all cases emanating from the TRC are undertaken without delay.

1.4 *make any other appropriate recommendation pertaining to or relevant to the investigation.*

4.4 It is further recommended that Minister informs the President of the appointment of retired Judge Mojaelo to undertake the investigation in accordance with the proposed terms of reference.

5. FINANCIAL IMPLICATIONS

The budget for the retired Judge will be drawn for the National Revenue Fund and the President will be approached to make a determination of the applicable salary.

6. RECOMMENDATIONS

6.1 The report is noted;

6.2 In terms of section Section 7 of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001) I hereby request Judge ??, who has been discharged from active service, undertake an investigation as ordered by the court in the matter of

6.3 I further Approve:

6.3.1 The accompanying terms of reference for the said investigation; and

6.3.2 The processing of the accompanying President Note informing the President of the investigation.

President Note Signed/

Letters addressed to Judge Mojaelo and the National Director of Public Prosecutions and Signed/



President Minute Signed/

ADV JB SKOSANA

**DEPUTY DIRECTOR-GENERAL: COURT SERVICES AND POLICY DEVELOPMENT
DATE**

Recommendation in paragraph 6.1 is **SUPPORTED / NOT SUPPORTED**

Recommendation in paragraph 6.2 is **SUPPORTED / NOT SUPPORTED**

Recommendation in paragraph 6.3 is **SUPPORTED / NOT SUPPORTED**

Comments:

**ADV D. MASHABANE
DIRECTOR-GENERAL**

DATE:.....

Recommendation in paragraph 6.1 is **SUPPORTED / NOT SUPPORTED**

Recommendation in paragraph 6.2 is **SUPPORTED / NOT SUPPORTED**

Recommendation in paragraph 6.3 is **SUPPORTED / NOT SUPPORTED**

Comments:

**MR J JEFFERY, MP
DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

DATE:.....



SUBJECT:	APPOINTMENT OF RETIRED JUDGE TO INVESTIGATE MATTERS AS DIRECTED IN THE JUDGEMENT OF <i>JOAO RODRIGUES V NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS</i> 2019 (2) SACR 251 (GJ)
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6. RECOMMENDATIONS

- 6.1 The report is noted;
- 6.2 In terms of section Section 7 of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001) I hereby request Judge P Mojapelo, a judge who has been discharged from active service, undertake an investigation as ordered by the court in the matter of *Joao Rodrigues v National Director of Public Prosecutions*
- 6.3 I further Approve:
- 6.3.1 The accompanying terms of reference for the said investigation; and
- 6.3.2 The processing of the accompanying President Note informing the President of the investigation. .

President Note Signed/

Letters addressed to Judge Mojapelo and the National Director of Public Prosecutions and Signed/

MR R O LAMOLA, MP
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE:.....



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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

BRANCH: COURT SERVICES

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MINISTER MEMO

DATE:	2 April 2022	FILE NR:	
TO:	Minister Lamola, MP	FROM:	S Chiloane Deputy Chief State Law Adviser: Policy Development
SUBJECT:	APPOINTMENT OF INVESTIGATIVE PANEL TO INVESTIGATE THE ALLEGED INTERFERENCE IN THE PROSECUTION OF CASES EMANATING FROM THE TRUTH AND RECONCILIATION COMMISSION: (JOAO RODRIGUES V NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS OF SOUTH AFRICA AND OTHERS)		

1. Purpose

The purpose of this Memorandum is to recommend that the Minister:-

- (a) appoint an Investigating Panel to investigate alleged interference and delay in the prosecution of cases pursuant to the decision of the Gauteng Division of the High Court in the matter of *Joao Rodrigues v National Director of Public Prosecutions of South Africa and Others* (Case No. 76755/2018) (*Rodrigues Judgment*); and
- (b) approve the terms of reference of the Investigating Panel concerned.

2. Authority

2.1 In terms of Section 179(5) and (6) of the Constitution of the Republic of South Africa, 1996, (the Constitution) the National Director of Public Prosecution must, *inter alia* -

- (a) determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public prosecutions, prosecution policy, which must be observed in the prosecution process;

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- (b) issue policy directives which must be observed in the prosecution process;
- (c) may intervene in the prosecution process when policy directives are not complied with; and
- (e) may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a period specified by the National Director of Public Prosecutions, from the following: (i) the accused person; (ii) the complainant; (iii) any other person or party whom the National Director considers to be relevant.

2.2 In terms of section 179(6) of the Constitution the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.

2.3 On 3 June 2020 the Gauteng Division of the High Court, in the *Rodrigues Judgment* ordered that an investigation into alleged interference in the prosecution of cases emanating from the TRC be undertaken. The directive of the court is explicit from the following paragraphs of the Judgment:

Paragraph [55] where the court contended that:

"there can be little argument that the political interference resulted in TRC cases (and one must assume the Timol case) not receiving the necessary attention by virtue investigation that could have led to a decision to prosecute."

Paragraph [65] where the court ordered as follows:

"It is also for these reasons that the conduct of the relevant officials and others outside of the NPA at the time should be brought to the attention of the National Director of Public Prosecutions for her consideration and in particular, to consider whether any action in terms of Section 41(1) of the NPA Act is warranted."

Finally, there must be a public assurance from both the Executive and the NPA that the kind of political interference that occurred in the TRC

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cases will never occur again. In this regard they should indicate the measures, including checks and balances, which will be put in place to prevent a recurrence of these unacceptable breaches of the Constitution." (own emphasis).

3. Background

- 3.1 The Prosecutorial Policy was revised in 2005 to address the prosecution of cases emanating from the TRC. The revised Policy included Paragraph C which relates directly to the TRC cases.

(Revised Prosecution Policy)

- 3.2 It is evident, from the evidence presented in the *Rodrigues* Judgment and several concerns expressed in the media that Paragraph C of the Prosecutorial Policy has not been observed by the NPA. The reasons for the non-observance with Paragraph C of the Prosecution Policy are, in the absence of any investigation to ascertain reasons for such, will be speculative.
- 3.3 The Minister, by virtue of his or her oversight over the NPA in terms of section 179 of the Constitution, is empowered to investigate circumstances and reasons for the non-observance of Part C of the Prosecution Policy in particular. The court in the *Rodrigues* judgment in paragraph 65 restated above alludes to this authority under the circumstances.
- 3.4 The evidence presented before the court revealed that the TRC had, at the conclusion of its work in 2003, referred several cases to the National Prosecuting Authority for prosecutions. Further, that between 2003 and 2017, no prosecutions were initiated arising from the TRC recommendations allegedly due to interference by the Executive. These allegations are contained in several affidavits which form part of the evidence presented as evidence in the court. This include the affidavits of Vusumzi Patric Pikoli (who was National Director at the time) and Jacobus Petrus Pretorius and Anton Rossouw Ackermann, then members of the NPA.

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- 3.5 The Supreme Court of Appeal (SCA) on 21 June 2021, in dismissing the appeal by Rodrigues for the stay of prosecution, re-affirmed the High Court's order that an investigation be held into the conduct of the NPA with regards to the TRC cases. At paragraph [27] thereof the SCA remarked:

"The Full Court rightly recommended a proper investigation into these issues by the NDPP and a determination whether any action in terms of s 41(1) of the National Prosecuting Authority Act 32 of 1998 (NPA Act) was necessary."

- 3.6 Given the delay in the prosecution of the cases emanating from the TRC it is in the interest of the administration of justice that such an investigation be undertaken in order to remove obstacles and hindrances in the prosecution of TRC related cases.

4. DISCUSSION

4.1 Consideration of appoint of Senior Counsel to head the investigation

- 4.1.1 Adv S Batohi, National Director of Public Prosecution (National Director), submitted a recommendation to the Minister that a Judge discharged from active service be appointed to conduct the investigation ordered by the court in the *Rodrigues Judgment*. Retired Deputy Judge President of the Gauteng Division of the High Court Judge Mojapelo, was subsequently requested to undertake the investigation ordered by the court. Judge Mojapelo was requested to conduct the above investigation in terms of section 7 of the Judges Remuneration and Conditions of Employment Act, 2001 (Act No, 41 of 2001)
- 4.1.2 Following engagements with Judge Mojapelo regarding the matter it appeared that it may not be appropriate for the investigation not to be undertaken by a Judge in view of the likelihood of the courts being seized of the matter as final arbiter in future. An investigating panel chaired by a Senior Counsel is deemed appropriate under the circumstances.
- 4.1.3 It is submitted that the decision to appoint the investigative panel derives from the Minister's constitutional power of oversight over the NPA read with section 21 of the National Prosecuting Act, 1998 (Act No.32 of 1998). Such a decision will constitute an executive decision which the Minister is empowered to take under



section 85(2) of the Constitution. A view is therefore held that such a decision will meet the test of rationality and reasonableness. (See attached article by Scott Roberts regarding the rationality test that the executive decision must conform to).

(Scott's article)

- 4.1.4 In view of her experience and seniority Adv S Baloyi, SC appears suitable to head the Investigating Panel. Other members of the panel may be appointed after consultation with Adv Baloyi.

4.2 Terms of Reference for the Investigating Panel

- 4.2.1 Draft terms of reference have been prepared and are enclosed for consideration and approval by the Minister.

- 4.2.2 It is anticipated that the investigation may not be concluded in less than six months, calculated from 1 May 2022. This is on the assumption that the remainder of the April months would be utilised for formalisation of the appointment of the panel and attended pre-investigation processes.

5. Recommendation

- 5.1 It is recommended that the Minister appoints an Investigating Panel to investigate the alleged interference and delay in the prosecution of cases emanating from the TRC as motivated in the memorandum; and
- 5.2 approve and sign the accompanying terms of reference of the Panel.

MR S CHILOANE
DEPUTY CHIEF STATE LAW ADVISER: COURT SERVICES

Date:



SUBJECT:	ESTABLISHMENT OF AN INVESTIGATIVE PANEL TO INVESTIGATE ALLEGED INTERFERENCE AND DELAY IN THE PROSECUTION OF CASES EMANATING FROM THE TRC
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The Memorandum is Noted/

I hereby Appoint / Not Appoint the Investigating Panel and Approve / Not Approve its
accompanying terms of reference

Letter to the National Director **Signed/**

Comments:

MR RO LAMOLA, MP

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

Date:

JB *M.S*



MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA

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NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

VGM BUILDING

123 Westlake Avenue Weavind Park,

Silverton

PRETORIA

Dear Adv S Batohi

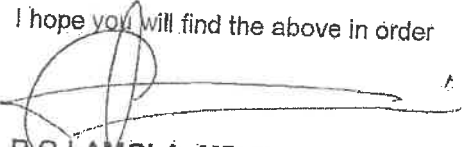
RE: DISCUSSIONS ON TRC MATTERS

Pursuant to our meeting held virtually on the 27th of July 2022 pertaining the judgment of the Gauteng High Court and the Supreme Court of Appeal of Rodrigues (TRC cases).

I have sourced as agreed in the meeting an opinion from the Office of the Chief State Law Advisor as attached herein. My cogitated view as guided by the opinion is that the matter should be in your hands for a decision as to whether there are facts that necessitate an enquiry.

My above view is premised on Paragraph 19 of the opinion that suggest that it is within the discretion of the NPA to decide upon consideration of the facts whether there is anything that warrants investigation to consider whether there is any conduct that warrants invoking Section 41(1) of the NPA Act.

I hope you will find the above in order


R.O. LAMOLA, MP
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE: 29/08/2022

