

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

STATEMENT

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I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and state that:

1. I am an adult male and the former Deputy President and President of the Republic of South Africa. I served as the Deputy President from 1994 until 13 June 1999, and as the President from 14 June 1999 to 24 September 2008.
2. Unless otherwise stated or so indicated by the context, the facts contained in this affidavit are:
 - 2.1. within my personal knowledge;
 - 2.2. alternatively, obtained through affidavits and documents in previous litigation;
 - 2.3. further alternatively, obtained through reports made to me in the course of my duties;
 - 2.4. further alternatively, obtained through public records.
3. I will attach any documents that I rely on in substantiation of the averments I make.
4. On 13 August 2026, the Commission issued a summons to me, to appear before it for purposes of:

"giving evidence before the Commission on all matters relating to the Commission's Terms of Reference of which you have knowledge and in addition being questioned about matters arising from the relevant parts of

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the affidavits/statements and the transcripts of the evidence listed in Annexure "A" to this Summons . . ."

5. I am aware that the Commission was established on the back of an application by families and victims of apartheid-era crimes in the Gauteng Division of the High Court ("Calata matter"); in which they seek declaratory orders and constitutional damages for the failure to investigate or prosecute cases identified by the Truth and Reconciliation Commission ("TRC"), and referred to the National Prosecution Authority ("NPA") for investigation and prosecution ("TRC cases").
6. The summons does not set out a formal list of questions for me to respond to. It requires me to give evidence generally on matters within the Commission's Terms of Reference. I also note that the evidence in Annexure "A" comprises:
 - 6.1. extracts from the Calata matter's founding affidavit with allegations regarding efforts or attempts to stop or suppress the investigation or prosecution of TRC cases. Some of these allegations implicate me as having been at the helm of the efforts to stop or suppress the investigation or prosecution of TRC cases;
 - 6.2. extracts from a transcript of the oral evidence given by Mr Calata to the Commission on 13 February 2026¹. In his evidence, Mr Calata expresses the view that the government, and the various administrations it has led (including mine) have failed the TRC victims' families, and calls on the Commission to subpoena me directly to answer for why, having received the TRC's reports as President, I did not instruct my Ministers of Justice,

¹ Calata Evidence 2.

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National Directors of Public Prosecutions, and police commissioners to act on them;

6.3. extracts from a transcript of the oral evidence given by Mr Calata to the Commission on 16 February 2026², in which Mr Calata is taken to, and takes issue with, an alleged statement issued by the Thabo Mbeki Foundation on 1 March 2024 in which I denied that I or my administration ever interfered with the work of the National Prosecuting Authority in relation to the TRC cases. Mr Calata disputes that denial and further alleges that I have shown disrespect for the Commission by not abiding by regulations, statements or requests made to me. These allegations implicate me directly, both through the quoted statement attributed to me and through the personal criticism directed at me;

6.4. extracts from a transcript of the oral evidence given by Adv Ackermann to the Commission on 4 March 2026³, in which Adv Ackermann gives evidence of what he says he was told by Mr Jan Wagenaar, the attorney who acted for General van der Merwe, Mr Adriaan Vlok and the Foundation for Equality Before the Law, that former President de Klerk and I took part in meetings with leaders of the SADF, SAPS and the ANC at which it was agreed that a political solution should be found to avoid prosecutions. This extract also comprises Adv Ackermann's own opinion, expressed in his evidence, characterising my 15 April 2003 parliamentary address as "classical Machiavellian". I note that Adv Ackermann's evidence on this point is what he says he was told by Mr Wagenaar, who was himself not a

² Calata Evidence 3.

³ Ackermann Evidence 1.

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party to any such meetings but was relaying what he in turn understood or was told. It is accordingly hearsay;

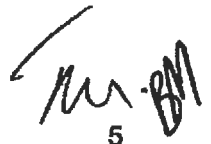
6.5. a sworn statement made by Adv Ntsebeza SC on 14 November 2025⁴, together with its two annexures. In the statement, Adv Ntsebeza recounts an encounter in 1996 or 1997 with former SADF Major-General Tienie Groenewald and other former senior SADF officers, at which he says he was told that an agreement existed between the ANC, the National Party, and high-ranking SADF officials that apartheid-era conduct would not be investigated or prosecuted, and that dossiers existed compromising senior ANC officials. This statement does not name me or refer to me personally; and

6.6. extracts from a transcript of the oral evidence given by Adv Ntsebeza to the Commission on 30 April 2026⁵, in which Adv Ntsebeza elaborates on the matters set out in Ntsebeza Statement 1. He also refers to a statement issued by the FW de Klerk Foundation in July 2021 confirming the existence of "an Informal agreement between the ANC leadership and former operatives of the pre-1994 government" under which the National Prosecuting Authority suspended prosecution of apartheid-era crimes. This evidence likewise does not name me personally, but forms part of the broader narrative of an alleged informal pact against prosecution.

7. I also note that the summons does not require me to make this Statement, but I nevertheless do so, in the hope that it will be of assistance to the Commission.

⁴ Ntsebeza Statement 1.

⁵ Ntsebeza Evidence 2.



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THE WORK OF THE COMMISSION MUST BE RESPECTED.

8. Mr Calata alleges that I have shown disrespect to the Commission by failing to abide by its regulations, statements or requests. The record contradicts this assertion.

9. I have always held the Commission's work in high regard. Its work is important because it addresses issues concerning a painful part of our country's history.

10. On 3 February 2026, my legal representatives wrote a letter to the Commission (attached as "TMM1") and expressed the following sentiment:

"You will appreciate that, in light of these developments, our clients' participation in the Commission's processes is necessarily constrained, as contemplated in the pre-hearing agenda. Notwithstanding these constraints, our clients wish to reiterate their ongoing respect for, and commitment to, the mandate and work of the Commission. They remain firmly supportive of the Commission's objectives and continue to regard its work as constitutionally and historically significant".

11. I stated the following under oath, in my replying affidavit before the High Court:

"34. I do not dispute that the Commission performs an important public function, nor do I seek to avoid engaging with its work. The present application concerns the lawfulness of a particular ruling made by the Chairperson and the fairness of the proceedings in which I am required to participate. Ensuring that such proceedings are conducted by an impartial decision-maker is itself an essential component of public accountability and the rule of law . . . The Commission relies on broad assertions regarding the public interest and the importance of its work. While those considerations are undoubtedly significant, they cannot override the requirement that the Commission's proceedings be conducted in accordance with the principles of fairness and impartiality. Public confidence in the Commission's work is not enhanced by dismissing legitimate concerns regarding the impartiality of its presiding officer without proper judicial scrutiny."

12. A copy of the relevant portion of my replying affidavit is attached as "TMM2".

13. I stated the following under oath in my application before the Constitutional Court:

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"131. In that letter, my attorneys of record were careful to record that my stance was not one of hostility to the Commission's mandate. The letter conveyed my ongoing respect for and commitment to the Commission's objectives. I regard its work as constitutionally and historically significant. My election not to participate was purely a consequence of the prevailing legal circumstances arising from the dismissal ruling."

14. A copy of the relevant portion of my founding affidavit in the Constitutional Court is attached as "TMM3".
15. My recusal application was based on legitimate grounds. Although the Constitutional Court ultimately dismissed the application,⁶ it did so by a majority of five judges to four. The four dissenting Justices found, (as Modiba J had found in the High Court), that the Chairperson ought to have recused herself. That division reflects a legitimate concern, not disrespect for the Commission or its work. The position of Justice Modiba was supported by no less than four Justices of the Constitutional Court. That is the clearest indication that my objection was neither frivolous nor disrespectful.
16. In fact, this Commission would have been served by the testimony of the Chairperson who bears personal knowledge of all the matters that were referred to the NPA for prosecution which were considered by her.

16.1. The testimony would make full disclosure, in line with the constitutional values of accountability, responsiveness and openness in section 1(d) of the Constitution of the precise role that she played in the NPA regarding the prosecution of TRC cases referred to the NPA. The steps the NPA took or failed to take at those early stages to lay the ground for the diligent prosecution of referred TRC cases is directly relevant to what happened

⁶ A decision that I respect.

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later. It is directly relevant to a proper investigation and understanding of what within the NPA may have contributed to any later failures to diligently prosecute TRC cases.

16.2. Further, she would have assisted the Commission by explaining the exact basis for granting Amnesty to the ANC Leadership and her subsequent reversal of that decision.

17. All of this is necessary to ensure closure of this long outstanding matter in that many people who had less involvement in the work of TRC and Prosecution have been required to testify, and they have in the main obliged.

18. But the Chairperson has refused, and still does, to make any disclosures in this regard.

19. The filing of this statement therefore and my appearance before the Commission later confirm my respect for the Commission and the importance of its work.

ALLEGATIONS AGAINST ME

20. As discerned from Annexure "A", I am alleged to have:

20.1. delivered a parliamentary address on 15 April 2003 announcing that the National Directorate of Public Prosecutions would, in dealing with the TRC cases, work with "our intelligence agencies" to enable perpetrators who had not taken part in the TRC process to "enter into arrangements that are standard in the normal execution of justice". This address is said to have

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opened the door to political interference in the prosecution of the cases referred to the NPA by the TRC;⁷

20.2. personally authorised, or been the source of the authorisation for, the suspension of the planned arrests in the Reverent Frank Chikane ("Rev Chikane") matter in 2006. This allegation is made on the strength of an account attributed to Mr H Wagener/Wagenaar, as recorded in Mr Ole Bubenzer's book and repeated in Mr Calata's affidavit;⁸

20.3. established, through the Special Dispensation for Political Pardons and the pardons process I announced to Parliament, a mechanism said to accommodate perpetrators who had not gone through the TRC amnesty process. This mechanism is also said to replicate in substance the "admission of crimes but no full disclosure" approach earlier proposed (without agreement being reached) by the Foundation for Equality Before the Law;⁹

20.4. been consulted directly by former President FW de Klerk, acting on behalf of the Foundation for Equality Before the Law, in relation to its proposed indemnity procedure for former members of the SAP who had not received amnesty;¹⁰

20.5. personally initiated, and from 1998 participated in, a series of secret talks with former SADF generals, (first as Deputy President and later as President). These talks are said to have been aimed at finding a mechanism

⁷ Calata 1, paras 124–126.

⁸ Calata 1, para 183.

⁹ Calata 1, paras 292, 379.3–379.4, 380.

¹⁰ Calata 1, para 379.1, read with 379.3.

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to avoid prosecutions arising from the conflicts of the past, including by attending meetings in person (among them a meeting at the Johannesburg home of Mr Jürgen Kögl) and by insisting on remaining the "prime representative" of the ANC in those talks rather than delegating the task to a Minister;¹¹

20.6. together with former President de Klerk, taken part in meetings between leaders of the ANC and senior members of the security forces at which it was agreed that a political solution should be found to avoid the prosecution of members of the security forces. This allegation is made on the strength of an account attributed to the attorney Mr Jan Wagenaar and repeated in the evidence of Adv Ackermann;¹²

20.7. failed, as President, notwithstanding personally receiving the TRC's reports in 2003, to instruct my Ministers of Justice, the National Directors of Public Prosecutions, or the police commissioners to ensure that the TRC-related cases were investigated and prosecuted, across both of my administrations from 2004 to 2008;¹³ and

20.8. issued a statement, through the Thabo Mbeki Foundation on 1 March 2024, denying that I or my administration ever interfered with the work of the National Prosecuting Authority in relation to the TRC cases. Mr Calata disputes this denial and says that it is inconsistent with the evidence set out elsewhere in Annexure "A".¹⁴

¹¹ Calata 1, paras 381.3 and 386.

¹² Ackermann Evidence 1.

¹³ Calata Evidence 2.

¹⁴ Calata Evidence 3.

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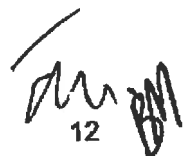
21. I will address each of these allegations in turn below, after I locate the TRC process in its proper historical context.

THE TRC PROCESS IN ITS CONTEXT

22. The establishment of the TRC must be understood in the context of South Africa's negotiated transition from apartheid to a democratic constitutional order. The question of how the new democratic State should deal with gross violations of human rights that were committed during the conflicts of the past was not incidental to that transition; it was one of the most critical but difficult matters which had to be confronted if the transition was to succeed.
23. The choices were difficult. At one extreme, the new democratic State might have attempted to prosecute all those responsible for violations committed during the apartheid era. At the other, it might simply have drawn a line under the past and granted general amnesty. Neither course was adopted. Instead, the constitutional settlement sought to accommodate the demands of truth, justice, accountability, reconciliation and the reconstruction of a deeply divided society.
24. This approach found expression in the epilogue to the Interim Constitution of South Africa, 1993, titled *National Unity and Reconciliation*. The epilogue described the Constitution as providing a "historic bridge" between a deeply divided past and a democratic future. It recognised that the divisions and conflicts of the past produced gross violations of human rights and expressly contemplated that these should be addressed on the basis of a need for understanding rather than vengeance, reparation rather than retaliation, and ubuntu rather than victimisation.

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25. The Promotion of National Unity and Reconciliation Act 34 of 1995 ("TRC Act") gave legislative effect to that constitutional settlement.
26. The Constitutional Court explained the nature of this settlement in *Azanian Peoples Organisation (AZAPO) and Others v President of the Republic of South Africa and Others* 1996 (4) SA 672 (CC) ("AZAPO"). The Court recognised that the constitutional settlement involved difficult choices and a balancing of the need for justice for victims of past abuses against the need for reconciliation and the successful transition to a new constitutional order (AZAPO paragraphs 17 to 21). Importantly, the Court recognised that truth itself was an important component of justice: many crimes of the apartheid era had been committed in circumstances of secrecy and could not readily be proved through the ordinary criminal process (AZAPO paragraph 17).
27. The TRC was not established merely as an institution for investigating historical crimes. It formed part of a broader constitutional project directed at establishing the truth concerning the conflicts of the past, acknowledging the suffering of victims, providing reparations, securing accountability, and promoting national unity and reconciliation.
28. The process provided an opportunity to those who committed crimes in the context of those violations of human rights to apply for amnesty and apologise to those they had harmed. It gave an opportunity to the latter to confront the wrongdoers.
29. The TRC retained the power to deny such amnesty and refer matters to the relevant authorities for prosecution. It also had the power to order for reparations to be paid to those who were victim to the crimes indicated above.



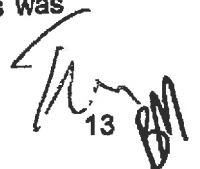
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30. The TRC Act contains important provisions which help to explain the importance of the TRC for the transition to democracy. I highlight them as follows:

30.1. The preamble to the Act records that the Constitution "provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence." The TRC was conceived, in other words, not as an end in itself, but as the mechanism through which that bridge would be built.

30.2. The Preamble also records that reconciliation required "a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimization", and that amnesty would be granted in accordance with the Constitution, in respect of acts associated with political objectives committed in the course of the conflicts of the past. This reflects the foundational compromise on which the transition itself rested: neither a blanket amnesty nor an uncompromising pursuit of prosecutions, but a process of individualised accountability through truth-telling.

30.3. Section 3(1) records that the Commission's objectives were to promote "national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past": by establishing as complete a picture as possible of gross human rights violations committed between 1 March 1960 and the cut-off date; by facilitating amnesty for full disclosure, by restoring the dignity of victims; and by compiling a report recording all of this. Each of these objectives was

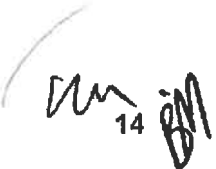

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integral to the legitimacy of the settlement that made the transition to democracy possible.

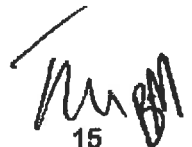
30.4. Section 4(a)(iii) and (iv) required the Commission to establish the identity of all persons, authorities, institutions and organisations involved in gross violations of human rights, and whether those violations resulted from deliberate planning by the State, a former state, or any political organisation or liberation movement. The inquiry was accordingly even-handed by design: it was not confined to the conduct of the former state, but extended to all parties to the conflict, including the liberation movements.

30.5. Section 20 gave effect to the amnesty mechanism itself: amnesty could be granted only where the Committee on Amnesty was satisfied that the application related to an act associated with a political objective and that the applicant had made full disclosure of all relevant facts. This linkage between amnesty and full disclosure was the mechanism by which truth was to be exchanged for freedom from prosecution, rather than truth being suppressed by either a general amnesty or protracted criminal trials that risked destabilising the negotiated settlement.

30.6. Section 11 required the Commission, in dealing with victims, to treat them "with compassion and respect for their dignity" and without discrimination of any kind, and to afford them the right to have their views and submissions considered. This gave the process its restorative character, and was central to public confidence that the transition was not being built on the silence or exclusion of victims.


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- 30.7. Section 36 required the Commission and its commissioners to function "without political or any other bias or interference" and to be "independent and separate from any party, government, administration."
31. The credibility of the truth the Commission was to establish, and hence the legitimacy of the transition it was designed to underpin, depended on that independence being real and not merely formal.
32. Ultimately, the TRC had a critical place and was vitally important in the historic endeavour to build the new post-apartheid South Africa.
33. Once the TRC process ran its course, persons who did not receive amnesty were not immunised from the ordinary operation of the criminal law. Nothing in the law permitted the Executive or the NPA not to prosecute a particular person, or the South African Police Service ("SAPS") not to investigate a particular alleged offence. I did not understand the constitutional settlement to confer such a power upon the President or the National Executive.
34. This context is important to the allegations now before the Commission.
35. After the TRC completed its work, my office received numerous requests for pardons from persons who claimed to have committed offenses and human rights violations for political reasons, and who were convicted for those offenses. The persons who applied for these pardons had not appeared before the TRC, and it seemed that some of these cases were relevant for the pursuit of national reconciliation. I had initially granted some of the applications for pardons, but those decisions were criticised by civil society, (including the Helen Suzman Foundation).



36. My view was that the facts underpinning these requests for pardons ought to have been placed before the TRC by the perpetrators during its existence. My speech on 15 April 2003 referred to these cases. As I explain elsewhere:¹⁵ the phrase "TRC cases" was used with regard to two instances:-

36.1. the cases referred to the NPA by the TRC; and

36.2. the cases that would be raised after the TRC had completed its work, sometimes referred to as "unfinished TRC business". These were also referred to as "TRC cases".

37. For convenience, and to maintain a clear and practical distinction, I shall refer to this second category of cases as "the pardon cases".

38. It was to the pardon cases that my 2003 speech referred. The issues about 'Prosecution Policy' and the 'Presidential Pardons' refer only to the pardon cases and not to the first category of cases, i.e., the "TRC cases" referred to the NPA by the TRC for prosecution.

THE ANC'S APPLICATION FOR COLLECTIVE AMNESTY – THE "ANC 37"

39. Some time while the TRC was continuing its work, a group of former senior officers of the South African Police ("SAP") and the South African Defence Force ("SADF"), including Generals, requested a meeting with the ANC concerning matters relevant to the TRC.

40. The former Senior Officers/Generals informed the ANC delegation that the apartheid Cabinet, led by Mr F.W. de Klerk, had refused to appear before the

¹⁵ In the Intervention application, para 9.

TRC. That was the reason why they (the former Senior Officials/Generals) had not volunteered to appear before the TRC. They considered it unfair that only the Subordinate Officials should appear before the TRC to account for their conduct (conduct that, in some instances, amounted to human rights violations requiring amnesty), without the context that representations (to the TRC) from the former Cabinet members and Senior Officials/Generals would have provided.

41. I, together with other members of the ANC Committee tasked to deal with the TRC, met these former SAP and SADF Officers. They told the ANC delegation that their view with regard to how the previous (apartheid) government should approach the TRC was as follows:

41.1. the former National Executive ("apartheid Cabinet") should approach the TRC to inform it of the decisions it had taken to advance its policies, as well as defend both the government and the apartheid system as a whole;

41.2. the Senior Officials serving the apartheid Cabinet, like the former SAP and SADF Generals, should approach the TRC to explain what they did to implement the policies handed down to them by apartheid Cabinet, including the instructions they had given to the subordinate officials; and

41.3. these Subordinate Officials should also approach the TRC to explain what they did to implement the directives handed down to them by the Senior Officials/Generals, as well as apply for amnesty where this was relevant.

42. On the back of this, the ANC offered to the former Senior Officials/Generals that the ANC would approach Mr de Klerk and his former colleagues to appear before the TRC for this purpose. In this regard the ANC decided to lead by example by

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ensuring that its own leadership applies for amnesty, having taken the policy and programmatic decisions which might ultimately have resulted in cadres in the more junior ranks engaging in actions which amounted to gross violation of human rights. The ANC hoped that this leadership group would be granted amnesty because it would then use this as a point of pressure to persuade the National Party leadership itself to approach the TRC Amnesty Committee.

43. Accordingly, the ANC decided that a collective of selected members of its leadership should approach the TRC Amnesty Committee to make a submission equivalent to the submission expected of the apartheid Cabinet, formerly led Mr de Klerk.
44. The ANC leadership handpicked the members of its leadership who would be part of the collective to approach the TRC, taking into account persons who would have been in relevant leadership positions during the period in question. None of them had committed any specific act of gross human rights violation as required by the TRC Act. The names of these members appear on the TRC's report, attached to this statement as "TMM4". I was one of them. This is the ANC "Group of 37" which applied for amnesty on the basis that the ANC had decided the policies which had been implemented by lower organs of the ANC.
45. The TRC first granted a general amnesty to the ANC "Group of 37" (see annexure ("TMM5")). The Chairperson of this Commission was part of that decision, and might be able to explain the rationale behind granting the ANC "Group of 37" amnesty.
46. Nevertheless, a court overturned that decision on the basis that the application of the "Group of 37" did not meet the requirements of the TRC Act, which required

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individual accountability, and for itemised offenses (for which amnesty was sought). The members of the "Group of 37", individually and collectively, were not practitioners at the implementation level equivalent to the Subordinate Officials and therefore had committed no specific offences requiring amnesty in terms of the TRC Act.

47. The TRC's final decision put an end to the ANC's attempt to set an example for the apartheid Cabinet. Had our application succeeded, it would have given us the moral authority to call on the apartheid Cabinet to do likewise.
48. The ANC understood and accepted the basis upon which the collective amnesty granted to the Group of 37 was ultimately set aside. The requirements of the TRC Act had to be met and the ANC did not seek to circumvent the decision by securing executive intervention in favour of its members.
49. This history is relevant to allegations that suggest that the ANC's attempt to obtain collective amnesty evidences a broader intention to secure immunity from prosecution. That was definitely not the purpose of the application. The ANC's intention was that its political leadership should account for the policies and decisions taken by it during the conflict and thereby encourage the former political leadership of the apartheid State to do likewise. This would, in turn, enable the Senior Officers and Subordinate Officials who had implemented those apartheid policies to account for their own conduct.
50. Once the legal process determined that collective responsibility did not satisfy the statutory requirements for amnesty, that outcome was accepted. The episode demonstrates, rather than contradict, the proposition that questions of amnesty had to be dealt with according to law.

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ROLE AND FUNCTIONS AS PRESIDENT

51. As President, I was Head of State and head of the National Executive. That position carried broad constitutional responsibilities for the functioning of Government. It did not, however, make the President the prosecutor of the Republic, nor did it confer upon me the power to determine whether a particular person should or should not be prosecuted. The position of President, however, permitted me to grant pardons to offenders. This power is set out in section 84(2)(j) of the Constitution.
52. The Constitution and the National Prosecuting Authority Act established the NPA as the institution responsible for instituting criminal proceedings on behalf of the State. Decisions concerning whether the available evidence justified a prosecution fell to the prosecuting authority in accordance with the Constitution, the law and the prosecution policy.
53. Similarly, the operational investigation of criminal offences was a function of the competent investigative authorities. Although Government could legitimately determine policy, establish institutional arrangements and facilitate cooperation between organs of State, I did not understand my office to entitle me to instruct investigators to abandon a criminal investigation or prosecutors not to institute a prosecution which they considered was warranted.
54. That distinction is important to much of the evidence identified in the summons. Government undoubtedly remained concerned with the cases for which pardons were being applied for, as I have described above. It does not follow from that fact that Government adopted a policy that TRC cases should not be investigated

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or prosecuted. The Executive did not concern itself, *at all*, with the cases that the TRC referred to the NPA for prosecution.

THE TABLING OF THE FINAL TRC REPORT

55. When the final volumes of the TRC Report were received in 2003, Government was required to consider what should follow the completion of the formal TRC process. Among the matters requiring attention were reparations, and the recommendations of the TRC.
56. An important part of the institutional context is that, before my address to Parliament on 15 April 2003, steps had already been taken to establish within the NPA a specialised unit relevant to the investigation and prosecution of serious crimes.
57. On 24 March 2003, I issued a Presidential Proclamation (attached as "TMM6") establishing the Priority Crimes Litigation Unit ("PCLU") within the Office of the National Director of Public Prosecutions. Adv Anton Ackermann SC was appointed as a Special Director of Public Prosecutions to head the PCLU. Among the matters with which the PCLU subsequently dealt were cases arising from the TRC process.
58. The PCLU was established approximately three weeks before the address of 15 April 2003, which is now alleged to have opened the door to political interference in TRC prosecutions. The establishment within the NPA of a specialised prosecutorial capacity capable of pursuing these matters is difficult to reconcile with the suggestion that my purpose shortly thereafter was to signal that those cases should be suppressed.

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59. Annexure "A" to the summons places particular reliance on what I said in my address of 15 April 2003 concerning those who had not participated in the TRC process.
60. It is important that my remarks be understood as a whole and not by isolating particular phrases from their context. The selective quoting from this speech is not only misleading but disingenuous. A full copy of my address is attached as "TMM7".
61. I expressly rejected a further general amnesty and stated that any such approach would "fly in the face of the TRC process" and would detract from the principle of accountability. That was an unequivocal statement of Government's position. I then stated:

"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".

62. Those words are important. The reason why I was discussing the NPA is because the pardon cases were referred to the NPA (by me), and that is not normal practice. In my 15 April 2003 speech, I said this:

"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."

63. I did not state that the NPA required the permission of the President or Government before pursuing those cases that were referred to it by the TRC.
64. When I tabled the TRC report before Parliament on 15 April 2003, I quoted what the TRC had said about some who *"did not participate in the TRC"*. In this regard, the TRC said:

"Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle... Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness... Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures... The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."

65. The point I then made in my speech regarding persons who did not appear before the TRC is simply this: for the relevant (pardon) cases, it was desirable to replicate the processes of the TRC. In this regard, the Government was firmly of the view that it was necessary to continue to pursue the objectives stated in the 1993 Constitutional provision on Unity and National Reconciliation and the TRC Act, despite the termination of the TRC process. So - while the NPA would be allowed to continue its normal work, it would be advised to collaborate with

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intelligence agencies to enable those still willing to disclose the truth to enter into arrangements with the NPA, if in fact the pardons sought concerned matters akin to those which would have legitimately served before the TRC Amnesty Committee.

66. My words were these (at the risk of repeating what I have quoted above):

"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."

"This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts."

"It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today, for some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity."

67. My statement above made it clear that Government's approach was not to grant immunity or general amnesty, but to encourage truth-telling. My reference to the NPA "working with intelligence agencies" simply underscored the need for co-

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operation between state institutions to uncover the full truth about claims that offences were politically motivated and not to shield perpetrators, but to protect democracy and advance justice without vengeance. That was not a reference to an unlawful amnesty, nor to an executive power to prohibit prosecution. I was referring to arrangements already known to the ordinary administration of criminal justice and permitted by law, in circumstances where persons possessing information might assist the State through the NPA and other state agencies in uncovering the truth. These include such possibilities for the NPA to enter into plea bargains, to seek suspended sentences and even to decline to prosecute.

68. The reference to cooperation with the intelligence agencies must also be understood in the context expressly stated in the address. Government remained concerned about networks established during the apartheid era which might continue to present a danger to the democratic State, including the existence of arms caches and other clandestine structures. Cooperation and information-sharing between the prosecuting and intelligence authorities could assist in uncovering those networks. It did not mean that the intelligence agencies were to control the prosecutorial decisions of the NPA.
69. The reference to cooperation with intelligence agencies was purely operational, aimed at ensuring effective information-sharing to uncover the truth about unresolved apartheid-era crimes, where perpetrators did not appear before the TRC, and never intended to influence prosecutorial decisions or outcomes in TRC cases referred to the NPA by the TRC for prosecution.


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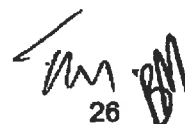
70. None of what I said in 2003 related to the cases referred by the TRC to the NPA – which it (the NPA) was expected to investigate and prosecute. I was referring to the pardon cases.

71. I expressed this as follows:

“Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter? Let us start off by reiterating that there be no general amnesty.”

72. It is demonstrably clear that I rejected any notion of a general amnesty and reaffirmed the principle that perpetrators of gross human-rights violations who were refused or failed to apply for amnesty must remain accountable under ordinary criminal law. Far from signalling political interference, my speech confirmed Government’s commitment to the TRC’s founding compromise, truth in exchange for amnesty, and to the continuation of prosecutions where that condition was not met.

73. I therefore reject the allegation that the April 2003 address announced, foreshadowed or authorised a policy of political interference with TRC investigations or prosecutions. The address expressly affirmed three propositions inconsistent with that allegation: first there would be no general amnesty; second, the NPA would decide which cases deserved and were capable of prosecution, bearing in mind the Government’s approach concerning the relevant pardons; and third, any alternative arrangements would have to be arrangements permitted by existing law through the NPA.


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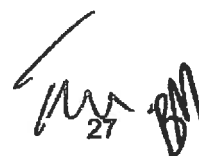
74. In respect of cases the TRC referred to the NPA for further investigation and prosecution, where applicants were denied amnesty, the Government accepted the TRC decision. The investigations and prosecutions did not require any intervention on the part of the National Executive. Accordingly, the National Executive assumed that the NPA would act as requested by the TRC.

RESPONSE TO SPECIFIC ALLEGATIONS

75. I turn now to a sequential response to each of the allegations against me (identified above). I identify, in each case, the specific part of Annexure "A" said to give rise to it.

The 15 April 2003 Address (Calata 1, paragraphs 124 – 126)

76. I have dealt fully with this Address above. The PCLU was established some three weeks before the Address. In the Address, I expressly rejected any further general amnesty. I discussed how the NPA should handle the requests for Pardon the President would refer to the NPA, in the context of the continuing constitutional pursuit of the objective of Unity and National Reconciliation. All this specifically excluded the matters referred to the NPA by the TRC.
77. I deny that the Address constituted, authorised or foreshadowed a policy of political interference with the investigation or prosecution of TRC cases. Annexure "A" to the summons does not include any material connecting anything I said in the Address, or did afterwards, to the closure, delay or abandonment of any specific TRC case. To the extent that the Commission has before it evidence establishing such a connection, I ask to be given the opportunity to deal with it specifically. I am not presently aware of any such evidence.

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78. I note further that Annexure "A" refers to a letter from Commissioner De Beer, which is alleged to record that the SAPS regarded the investigation of TRC matters as a DSO responsibility, and that the NDPP would accordingly need to approach the President for a decision as to which agency should investigate.¹⁶
79. On Mr Macadam's account, as recorded in the same annexure, NDPP Ngcuka never in fact approached the President on this question.¹⁷
80. If, as the record suggests, no such approach was made to me, then no decision can be said to have been withheld by me, since none was sought. There was no requirement in law or fact for such a decision to be sought from me.

The Rev Chikane matter (Calata 1, paragraph 183)

81. It is alleged that I personally authorised, or was the source of the authorisation for, the suspension in 2006 of the planned arrests in the matter concerning the attempted poisoning of Rev Chikane.
82. I record, for the Commission's assistance in weighing this allegation, that it rests on an account attributed to Mr H Wagener, as recorded in Mr Ole Bubenzer's book, and repeated in turn in Mr Calata's affidavit. Mr Wagener is not recorded as having been present at, or being party to, any decision taken within Government on this question. The allegation is accordingly hearsay, and I am not aware of any account by a person with direct knowledge that connects the decision to suspend those arrests to me.

¹⁶ Calata 1, para 137.2.

¹⁷ Calata 1, para 137.3.

83. I did not give any instruction, direct or indirect, that the Rev Chikane matter should be placed on hold, and I did not authorise any official to convey such an instruction on my behalf. I was not even aware of these planned arrests; this was not within my remit as President of the Republic.

The pardons process (Calata 1, paragraphs 292, 379.3–379.4, 380)

84. It is alleged that the Special Dispensation for Political Pardons, which I announced, and the pardon application window that followed, were established to accommodate perpetrators who had not gone through the TRC amnesty process. It is also alleged that this mechanism replicated in substance the "admission of crimes but no full disclosure" approach that was unsuccessfully proposed by the Foundation for Equality Before the Law ("FEL").
85. The power to pardon or relieve offenders, and to remit fines, penalties or forfeitures, is an express constitutional power of the President under section 84(2)(j) of the Constitution. It is conceptually and legally distinct from an instruction to a prosecutor not to prosecute. The pardon power operates only in relation to persons already convicted, whereas the allegations elsewhere in Annexure "A" concern the investigation and prosecution of persons not yet convicted.
86. I had previously exercised the pardoning power in 2002 in relation to a number of prisoners who were convicted of politically motivated offences. That exercise attracted public criticism, especially from the Helen Suzman Foundation, and the former Chairperson of the TRC, the late Archbishop Emeritus Desmond Tutu. The criticism included that the process of pardoning lacked transparency. It was precisely because of that criticism, and the sensitivity of these matters, that

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Government considered it necessary to have a more structured and transparent process for future applications. The Minister of Justice and Constitutional Development at the time, Mrs Brigitte Mabandla, referred publicly on 5 January 2007 to the need to develop such a policy.

87. I did not understand the Special Dispensation, or the pardons process generally, to authorise or require the NPA to refrain from investigating or prosecuting any person who had not received amnesty and had not yet been convicted. The exercise of the pardon power in respect of persons already convicted is not evidence of a policy to suppress the prosecution of TRC cases or of persons not yet convicted.
88. As to the comparison drawn with the FEL's proposed Indemnity procedure, (addressed more fully below), I deny that the Special Dispensation was designed to give effect to that proposal. The Special Dispensation operated within an express constitutional power; the FEL's proposal, by contrast, contemplated new legislation creating a special plea, which was never enacted and which I did not approve.

The De Klerk / FEL consultations (Calata 1. paragraph 379.1 read with 379.3)

89. It is alleged that former President de Klerk consulted with me directly, on behalf of the FEL, regarding its proposal for an indemnity procedure (based on an admission of the crime committed, but without the need for full disclosure), for former members of the SAP who had not received amnesty.

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90. What is clear from Annexure "A" is that these discussions took place (none of them were with me) and ended in 2004, without agreement being reached¹⁸, and that the FEL's proposal was never enacted into law. I am not aware of any respect in which that proposal, whatever consultations took place regarding it, resulted in any TRC case being stopped, suppressed or not pursued.
91. I deny that I discussed and/or agreed, whether with former President de Klerk or with the FEL, to any procedure whose object or effect was to shield former security force members from prosecution.

The SADF Generals' talks (Calata 1, paragraphs 381.3 and 386)

92. It is alleged that I personally initiated, and from 1998 participated in, a series of secret talks with former SADF Generals, at first as Deputy President and later as President. According to the allegations, these talks were aimed at finding a mechanism to avoid prosecutions arising from the conflicts of the past. I am also alleged to have insisted on remaining the "prime representative" of the ANC in those talks, rather than delegating the task to a Minister; and that I attended meetings in person, including one at the Johannesburg home of Mr Jürgen Kögl.
93. As I have explained above, I did participate in discussions with former senior officers of the SAP and SADF. Those discussions arose because those officers considered it unfair that they alone, or the Subordinate Officials who had implemented their instructions, should account to the TRC for conduct carried out pursuant to policies set by the apartheid Cabinet, when the apartheid Cabinet itself, led by former President de Klerk, had declined to appear before the TRC.

¹⁸ Calata 1, para 379.4.

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The purpose of those discussions, from the ANC's side, was to encourage fuller participation in the TRC process by the former apartheid political and security leadership, in the same spirit that led the ANC to attempt, through the "Group of 37", to set an example of the accountability we asked of others.

94. I did not agree, at any such discussion, that the NPA or SAPS would be prevented from investigating or prosecuting offences committed by members of the former security forces. I specifically deny having entered into any agreement of that kind. It is in any event a criminal offence to interfere with the work of the NPA. Section 32(1)(b) of the NPA Act 32 of 1998 provides that:

"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."

95. Section 41(1) of the NPA Act cautions that:

"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."

96. It is alleged that in 1998, secret consultations began between the government and a group of high-ranking former generals of the SADF and the security police, to discuss questions of criminal liability arising from the past. The discussions were allegedly mediated by Mr Jürgen Kögl, who had close ties to key ANC members.

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97. I deny this allegation. The discussions which included Mr Jürgen Kögl in my presence and various Afrikaners had nothing to do with "questions of criminal liability arising from the past". They were solely and exclusively about the various demands made by some Afrikaners about such matters as a 'volkstaat' and 'the right to self-determination'. This is a matter of public record and not a secret.
98. I record that the letter said to have been prepared by Mr Marais for the signature of the former SADF Chiefs¹⁹ is itself an unsigned document, recalled by its author many years after the events it describes, and set out in Mr Schmidt's book rather than in any contemporaneous record or affidavit. It is hearsay. I had nothing to do with any of this and cannot speak to these hearsay allegations. There is no affidavit from Mr Marais to which I should answer. There is only a photograph of an unsigned letter in a book. On the account in Annexure "A", the letter was addressed to former President Zuma.

The alleged "political solution" meetings (Ackermann Evidence 1)

99. It is alleged, on the strength of Adv Ackermann's evidence, that former President de Klerk and I took part in meetings with leaders of the SADF, SAP and the ANC at which it was agreed that a political solution should be found to avoid the prosecution of members of the security forces.
100. I did not attend a meeting with former President de Klerk, the SADF, SAP and the ANC, for any purpose.
101. In any event, this allegation, on the face of Adv Ackermann's evidence, is what he says was told to him by the attorney Mr Jan Wagenaar. Mr Wagenaar acted,

¹⁹ Calata 1, para 386.

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on Adv Ackermann's account, for General van der Merwe, Mr Adriaan Vlok, and the FEL. That is, he acted for parties with a direct interest in the outcome of any prosecution of former security force members. Mr Wagenaar is not alleged as having attended any meeting at which I was present, and there is no allegation as to who Mr Wagenaar's source was. Adv Ackermann does not purport to give first-hand evidence of any such meeting. The allegation is hearsay, from a source acting for interested parties, relayed through a further witness who was himself not present at the alleged meetings.

102. I deny having agreed, at any meeting, that a political solution should be found to avoid the prosecution of members of the security forces. I did not agree that criminal investigations or prosecutions of TRC cases should be stopped. I rejected a general amnesty. I addressed the pardon cases in the manner explained above.

103. I deny Adv Ackermann's characterisation of my April 2003 address as "classical Machiavellian". It is not clear to me what he means by this. It is in any event a matter of opinion and not of fact. I have set out above what I said and what I intended by it, and I ask that my address be read and understood as a whole, and not through the mischaracterisation Adv Ackermann has chosen to place on particular phrases within it.

Alleged failure to act on the TRC's reports (Calata Evidence 2)

104. Mr Calata's evidence calls on the Commission to require me to explain why, having received the TRC's reports as President in 2003, I did not instruct my Ministers of Justice, the National Directors of Public Prosecutions, or the police commissioners to act on them.

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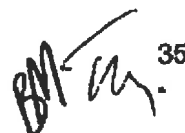
105. I have explained above why, as a matter of constitutional principle, the President does not direct the NPA or SAPS in relation to individual investigations or prosecutions, and why I did not understand my office to entitle me to do so.
106. This is not to say that I had no dealings at all with the NPA on operational matters reported to me by the NPA as requiring my attention. I gave an account of one such matter, concerning the investigation of the former National Commissioner of Police, Mr Jackie Selebi, in my founding affidavit in the intervention application. I attach the relevant parts of that affidavit here as "TMM8" (for the Commission's convenience).
107. In any case, the correct procedure was that as soon as possible after the President had received the TRC Report on behalf of the Government, he should report this to the Cabinet. It was therefore the Cabinet, not the President, which would decide on what steps Government should take arising from the TRC Report.

The 1 March 2024 Foundation statement (Calata Evidence 3)

108. It is recorded that, in a statement issued through the Thabo Mbeki Foundation on 1 March 2024, I denied that I or my administration ever interfered with the work of the NPA in relation to the TRC cases, and stated that the NPA:

"must demonstrate enough integrity by apologising for not processing the TRC cases rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication."

109. Mr Calata disputes that denial and regards the statement as showing disrespect for the victims' families. I stand by this statement and still call for accountability

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from those who were tasked with this responsibility and that they had and still have in their power the authority and responsibility to arrest and prosecute those that interfered with prosecution of the criminal matters flowing from the TRC process. I am, unfortunately, unable to agree with him.

110. In the article to which Mr Calata refers, I quoted what the South Gauteng High Court had said about the need for the NDPP to take action against the Prosecutors who had not acted on the TRC Cases and those who might have obstructed them. I fully supported this High Court proposal, which had nothing to do with disrespecting the victims' families. To be clear, the Thabo Mbeki Foundation did not make a statement as alleged. I wrote two articles on this, which were carried on the Foundation's website.

111. It is illogical for Mr Calata to characterise my statement supporting Justice Kollapen's remarks as disrespectful. That could only follow if he sought to shield the prosecutors whom Justice Kollapen said had failed in their duties. Accountability requires those prosecutors to explain honestly why they did not prosecute, which cases were affected, whether anyone prevented or attempted to prevent prosecution, how any such interference occurred, who was responsible, and why those responsible were not prosecuted. Such an inquiry cannot reasonably be regarded – least of all by Mr Calata – as disrespectful to him, his father's memory, or the families who have waited so long for accountability.

112. I attach as "TMM9", the ANC statement which I delivered on the occasion of the death of the Cradock Four which included the late Fort Calata. This statement shows no disrespect to the Cradock Four like many of our fallen heroes and heroine including Fort Calata. The opposite is true.

113. I do not resile from the substance of the denial contained in the statement I made in the articles: I did not interfere, and did not cause my administration to interfere, with the NPA's work on the TRC cases.

CONCLUSION

114. I deny the allegations that my administration adopted a policy to suppress the investigation and prosecution of the cases referred to the NPA by the TRC as well as any other TRC cases or made any attempts to interfere with the investigation and prosecution of such TRC cases.

115. Throughout my tenure as President, I consistently affirmed prosecutorial independence and rejected impunity for apartheid-era crimes. That is a matter of public record.

116. In my address of 15 April 2003, I expressly rejected a general amnesty. In the same address, I discussed a proposal about how to handle matters that had not been processed by the TRC and were not with the NPA but had been referred to the President as Applications for Pardon.

117. Government's continuing consideration of lawful mechanisms for dealing with politically motivated offences which remained unresolved after the TRC was part of the difficult and unfinished process of national reconciliation. It did not, in my

BM 1/37

understanding or intention, authorize the suppression of criminal investigations or prosecutions.

118. I recognize the profound importance of these matters to the many victims' families, and people of our country who have waited many years for answers. The passage of time also makes it particularly important that conclusions concerning what occurred decades ago be based upon reliable evidence, and the proper constitutional and institutional context, rather than upon general narrative and inference alone.

119. I welcome the opportunity afforded by this Commission to establish what occurred. I will assist the Commission to the best of my ability and will identify candidly those matters which remain within my recollection, those which are supported by available records, and those in respect of which, because of the passage of time or because they occurred within institutions for which I did not have operational responsibility, I cannot responsibly provide direct evidence.

120. I reiterate that I did not direct, authorize or approve the suppression of the investigation or prosecution of cases referred by the TRC to the NPA. I had no reason to do so. To the extent that such cases were not investigated or prosecuted, the Commission must establish why that occurred, by whom the relevant decisions were taken, and upon whose authority. I will cooperate fully with that enquiry.

121. In this regard, the fact is that there are some established truths:

121.1. One of these is that the TRC referred more or less 300 cases to the NPA for investigation and prosecution.

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- 121.2. It is clear that for many years, to date, there was no investigation or prosecution of at least the majority of these cases.
- 121.3. The task to prosecute these cases was and remains the exclusive responsibility of the NPA.
- 121.4. It is therefore the task of the NPA to explain why it has not discharged its exclusive obligation to prosecute those deserving of prosecution.
- 121.5. In this regard, the NPA has argued that it was obstructed or otherwise stopped by the National Executive from carrying out its task of prosecuting those concerned.
- 121.6. However, I have absolutely no doubt that the NPA will fail to present to the Commission of Inquiry concrete and credible evidence of actions taken by the National Executive which made it impossible for the NPA to carry out its constitutional and statutory obligations concerning the TRC cases.
- 121.7. I say this because I know this as a matter of fact that no decision was ever taken by the National Executive to obstruct the investigation and prosecution of the TRC cases.
- 121.8. In the end, the question will remain, demanding an answer – why did the NPA not discharge its responsibilities with regard to the TRC cases?
122. The failure by the NPA to tell the truth, the whole truth and nothing but the truth in this regard leaves one with no choice but to make certain deductions.

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123. It is fair and logical to deduce that the majority, or even the overwhelming majority of the cases referred to the NPA by the TRC were of people who had served within the structures of the apartheid system. I also presume that the TRC Amnesty Committee denied to grant these amnesty because they had failed to tell the truth, the whole truth and nothing but the truth.
124. These would now be faced with the prospect of prosecution and therefore the danger that they might be sentenced to long terms of imprisonment.
125. I deduce that some within the high echelons of the erstwhile apartheid regime took fright at this eventuality. They took fright on the assumption that at least some of those who had declined to tell the whole truth to the TRC Amnesty Committee might now do so, precisely to avoid serving long terms of imprisonment. The people in the erstwhile high echelons of the apartheid system would take fright at this possible eventuality because for them, it would constitute the opening of a can of worms.
126. That can of worms would be that when now, before the courts, the former apartheid operatives told the truth, the whole truth and nothing but the truth to keep themselves out of jail, if possible, they would expose large numbers of senior apartheid actors as having been perpetrators of gross human rights violations, as described in the TRC Act. A decision was therefore taken that the prosecution of these large numbers of former apartheid operatives who had been denied amnesty by the TRC Amnesty Committee must be avoided at all costs.
127. In this context we must also take into account that the post-apartheid NPA inherited Prosecutors from the apartheid era. The question remains whether some or all of these have been motivated diligently to prosecute people who had

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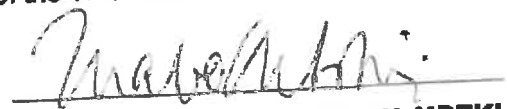
been their comrades in the defence and perpetuation of the apartheid system, now referred to them for prosecution.

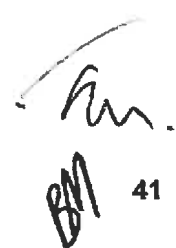
128. Regardless of the deductions I have just made, what we have seen is the gathering of a large cohort of allegations seeking to place the blame for the absence of prosecutions elsewhere, that elsewhere being the National Executive.

129. The late British statesperson, Sir Winston Churchill, has explained the elaborate steps that the Allies took during the Second World War to mislead the Germans about where on the European coast and when the Allied forces would land as they began the major offensive on the Western Front in 1944. He said the truth about the time and landing place, Normandy in France on 6 June 1944, had to be protected with a 'Bodyguard of Lies'.

130. It would seem to me that some in our country have spent a considerable amount of time and energy to manufacture a 'Bodyguard of Lies' to hide the truth about why the cases referred to the NPA by the TRC were not prosecuted and who was responsible for this gross misdemeanor.

131. I hope that the Commission will, at last, cause the truth, the whole truth and nothing but the truth about the matter of the TRC cases to be known.


THABO MVUYELWA MBEKI

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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 **JOHANNESBURG** on this the 05TH day of OCTOBER, 2026; the Regulations prescribed in terms of Government Notice R 1258 dated 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS

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 Commissioner of Oaths
 Practising Attorney
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MURISON
 & ASSOCIATES



ANNEXURE "TMM1"



The Secretary:

The Judicial Commission of Inquiry into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of the Truth and Reconciliation Commission cases

Per e-mail: secretary@trc-inquiry.org.za

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Our Ref: Mr I Armoed/ Aneesa
Your Ref: Secretary@trc-inquiry
Date: 03 February 2026
Email: irvine@bogwanaburns.com
lutho@bogwanaburns.com
thembelile@bogwanaburns.com
aneesa@bogwanaburns.com

Dear Madam Secretary.

RE: TRC COMMISSION PRE-HEARING MEETING

1. We refer to the above matter and to the pre-hearing meeting agenda circulated to interested parties earlier today, receipt of which is acknowledged with thanks and contents of which have been noted.
2. We are instructed to place on record that our clients intend on taking the ruling in respect of Justice Khampepe's recusal on judicial review. We have been instructed to institute those proceedings forthwith.

3. We have instructed counsel to attend the scheduled pre-hearing meeting tomorrow, for the limited purpose of placing these instructions formally on record.
4. You will appreciate that, in light of these developments, our clients' participation in the Commission's processes is necessarily constrained, as contemplated in the pre-hearing agenda. Notwithstanding these constraints, our clients wish to reiterate their ongoing respect for, and commitment to, the mandate and work of the Commission. They remain firmly supportive of the Commission's objectives and continue to regard its work as constitutionally and historically significant.
5. Once again, we place on record that our intervention in this matter is predicated on protecting the integrity of this Commission and to ensure finality.
6. However, due to the prevailing circumstances, our clients are regrettably unable to participate in the Commission's processes in any meaningful way at this stage, pending the outcome of the intended judicial review.

Kind Regards



Boqwana Burns Inc.

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ANNEXURE "TMM 2"

010-292

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

Case No: 2028-026936

In the matter between:

JACOB GEDLEYHLEKISA ZUMA

1st Applicant

and

THE CHAIRPERSON OF THE COMMISSION

1st Respondent

SECRETARY OF THE COMMISSION

2nd Respondent

ADVOCATE ISHMAEL SEMENYA SC

3rd Respondent

COMMISSIONER FRANS KGOMO

4th Respondent

COMMISSIONER ANDREA GABRIEL SC

5th Respondent

THE CALATA GROUP

6th Respondent

THABO MVUYELWA MBEKI

7th Respondent

NATIONAL PROSECUTING AUTHORITY

8th Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL
AFFAIRS**

9th Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA**

10th Respondent

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010-292

REPLYING AFFIDAVIT TO THE COMMISSION'S ANSWERING AFFIDAVIT

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and state that:

- 1 I am an adult, and the former Deputy President (1994 until 13 June 1999) and President (14 June 1999 to 24 September 2008) of the Republic of South Africa.
- 2 Unless otherwise stated or so indicated by the context, the facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives. I accept such advice as correct.
- 3 I have read the answering affidavit deposed to by Advocate Ishmael Anthony Mmakwena Semenya ("Adv Semenya SC") on behalf of the first to fifth respondents ("Commission"). The Commission's affidavit is also in response to my affidavit and application to review and set aside the Chairperson's ruling in which she declined to recuse herself from the Commission.
- 4 Due to time constraints, this affidavit is confined to addressing those allegations in the Commission's affidavit that pertain to me thematically. To the extent that the Commission's affidavit deals with allegations directed exclusively at former President Jacob Zuma, or with issues that do not concern me, no response is

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33 My review application is brought *bona fide* and for the purpose of securing the integrity of the Commission's proceedings. It is not brought for any dilatory or ulterior purpose.

34 I do not dispute that the Commission performs an important public function, nor do I seek to avoid engaging with its work. The present application concerns the lawfulness of a particular ruling made by the Chairperson and the fairness of the proceedings in which I am required to participate. Ensuring that such proceedings are conducted by an impartial decision-maker is itself an essential component of public accountability and the rule of law. The Commission's attempt to characterise the review application as obstructive overlooks the nature of the right implicated. The question whether a decision-maker ought to recuse herself must be determined objectively and on the basis of the applicable legal test for reasonable apprehension of bias. It cannot be dismissed as abusive simply because it may have implications for the conduct or timing of the proceedings before the Commission or because Justice Khampepe takes a different view.

34.1 The Commission relies on broad assertions regarding the public interest and the importance of its work. While those considerations are undoubtedly significant, they cannot override the requirement that the Commission's proceedings be conducted in accordance with the principles of fairness and impartiality. Public confidence in the Commission's work is not enhanced by dismissing legitimate concerns

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regarding the impartiality of its presiding officer without proper judicial scrutiny.

- 35 For these reasons, the Commission's allegation that the present application constitutes an abuse of this Court's process cannot be sustained. The application raises *bona fide* and substantial legal issues concerning the lawfulness of the impugned ruling and the fairness of the proceedings before the Commission. It is brought for the purpose of vindicating those rights and ensuring the integrity of the Commission's processes.

DELAY IN BRINGING THE RECUSAL APPLICATION IS NOT DISPOSITIVE

- 36 The Commission says that I unduly delayed in seeking Justice Khampepe's recusal. It asserts further that I had been aware of the broader subject matter underlying the Commission for a long time; knew of its establishment from at least May 2025, and nevertheless only sought recusal in December 2025 after President Zuma had done so. The high water-mark of this contention is that I should be precluded from seeking Justice Khampepe's recusal on that basis alone.

- 37 That contention is incorrect and I deny it. First, the Commission conflates knowledge of the broader dispute concerning the alleged suppression of TRC prosecutions, and knowledge of the existence of the Commission, on the one

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ANNEXURE "TMM" 8
001-130

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT Case No.: _____
GP Case No.: 2026 - 026936

In the matter between:

JACOB GEDLEYHLEKISA ZUMA

THABO MVUYELWA MBEKI

And

THE CHAIRPERSON OF THE COMMISSION:
COMMISSIONER SISI KHAMPEPE, N.O.

SECRETARY OF THE COMMISSION

ADVOCATE ISHMAEL SEMENYA SC, N.O.

COMMISSIONER FRANS KGOMO, N.O.

COMMISSIONER ANDREA GABRIEL SC,
N.O.

CALATA GROUP

NATIONAL PROSECUTING AUTHORITY

MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENTPRESIDENT OF THE REPUBLIC OF SOUTH
AFRICA

REGISTRAR OF THE CONSTITUTIONAL COURT
PRIVATE BAG 21
CONSTITUTIONAL HILL
08 APR 2026
DRAAMPONTEIN 2017
GRIFTEER VAN DIE KONSTITUSIONELE HOFG

1st Applicant2nd Applicant1st Respondent2nd Respondent3rd Respondent4th Respondent5th Respondent6th Respondent7th Respondent8th Respondent9th Respondent

FOUNDING AFFIDAVIT

Second Applicant's application for leave to appeal
in terms of section 167(6)(b) of the Constitution, read with rule 19 of the
Constitutional Court Rules and direct access in terms of section 167(6)(a) of the
Constitution, read with rule 16 of the Constitutional Court Rules

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I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and state that:

1. I am an adult, and the former Deputy President (1994 until 13 June 1999) and President (14 June 1999 to 24 September 2008) of the Republic of South Africa.
2. Unless otherwise stated or so indicated by the context, the facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives. I accept such advice as correct.
3. I bring this application on my own behalf, and on behalf of former Ministers Brigitte Mabandla (former Minister of Justice), Charles Ngakula (former Minister of Defence), Ronnie Kasrils (former Minister of State Security), and the current speaker of the National Assembly, Thoko Didiza (former Minister of Agriculture and acted as Minister of Justice on a few occasions). I refer to the other persons on behalf of whom I bring this application collectively, "the former members of the executive". Their respective confirmatory affidavits will be filed together with this affidavit or soon thereafter.
4. The former members of the executive were parties to the recusal application that forms the subject matter of this application. They were, however, not

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placed on record (through my attorneys of record) that I was unable to participate in the Commission's processes in any meaningful way, pending the outcome of those proceedings.

131. In that letter, my attorneys of record were careful to record that my stance was not one of hostility to the Commission's mandate. The letter conveyed my ongoing respect for and commitment to the Commission's objectives. I regard its work as constitutionally and historically significant. My election not to participate was purely a consequence of the prevailing legal circumstances arising from the dismissal ruling.

132. On 30 March 2026 – the same day the majority judgment was delivered – the Commission's Secretary (Adv AM Thokoa), addressed a letter to my attorneys (attached as "TMM37"). The Commission recorded in that letter that the judicial review proceedings were "*dismissed with costs*". It called upon me and other former members of the executive to file our statements, incorporating responses to the evidence that has been led before the Commission to-date. We are also directed to file our responses to the rule 3.3 notices and the request for information by no later than 24 April 2026.

133. That deadline is now imminent. I am thus confronted with a stark and untenable choice, in the absence of relief from this Court, to either comply with the Commission's demands and participate in proceedings chaired by a person whose impartiality I have placed in issue, and whose recusal I have consistently maintained is warranted. Pursuing this route means abandoning, in practical effect, my challenge to the merits of the dismissal ruling and

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ANNEXURE "TMM4"

AC/99/0046

TRUTH AND RECONCILIATION COMMISSION**AMNESTY COMMITTEE****APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT NO. 34 OF 1995.****SATHY ANDRANATH RAGUNANAN MAHARAJ (AM 5514/97) 1ST APPLICANT****JOHANNES MODISE 2ND APPLICANT****(AM 5500/97)****ANDREW MANDLA LEKOTO MASONDO 3RD APPLICANT****(AM 5501/97)****STEPHEN VUKILE TSHWETE 4TH APPLICANT****(AM 5539/97)****NGOAKO ABEL RAMATHLODI 5TH APPLICANT****(AM 5538/97)****GODFREY NHLANHLA NGWENYA 6TH APPLICANT****(AM 5537/97)****LAMBERT LEHLOHONOLO MOLOI 7TH APPLICANT****(AM 5512/97)****SNUKI JOSEPH ZIKALALA 8TH APPLICANT****(AM 6515/97)****PETER RAMOSHOANE MOKABA 9TH APPLICANT****(AM 5504/97)****B. P. GILDER 10TH APPLICANT****(AM 5510/97)****B.L. MASETHLA 11TH APPLICANT****(AM 5511/97)****M.N. PHOSA 12TH APPLICANT****(AM 5520/97)****Z.P. TOLO 13TH APPLICANT****(AM 5526/97)****T.M. MBEKI 14TH APPLICANT**

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(AM5506/97)

C. NQAKULA 15TH APPLICANT

(AM 5507/97)

N.N. MAPHISA 16TH APPLICANT

(AM 5505/97)

S.W. SIGXASHE 17TH APPLICANT

(AM 5536/97)

B.A. MANCI 18TH APPLICANT

(AM 5535/97)

R.S. MOPATI 19TH APPLICANT

(AM 5527/97)

S.S. MAKANA 20TH APPLICANT

(AM 6158/97)

T.M.G. SEXWALE 21ST APPLICANT

(AM 5533/97)

J.K. NETSHITENZHE 22ND APPLICANT

(AM 5532/97)

P.R.F. MDLULU-SEDIBE 23RD APPLICANT

(AM 5530/97)

J.G. ZUMA 24TH APPLICANT

(AM 5530/97)

J.K. NKADIMENG 25TH APPLICANT

(AM 5529/97)

J.S. SELEBI 26TH APPLICANT

(AM 5528/97)

A. NZO 27TH APPLICANT

(AM 6203/97)

DECISION

On the 9th of May 1997, 29 applications were submitted to the Amnesty Committee by the Truth and Reconciliation Commission desk of the African National Congress. The applications were lodged under cover of a notice dated 09 May 1997, indicating that the 29 applications were to be considered in terms of Section 19 (5) (b) of the Promotion of National Unity and Reconciliation Act No. 34 of 1995, which section empowers the Amnesty Committee to jointly consider individual applications. Further, a declaration was

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submitted "in support" of the applications and the applicants in turn referred to the declaration as the basis for their applications for amnesty. The content of this declaration is dealt with herein under.

On receiving the notice and 29 applications, individual files were opened, each registered separately in terms of the procedures of the Amnesty committee. In the meantime, further individual applications from various applicants other than those received from the ANC/TRC desk were received which also referred to the declaration, purporting to be an extension of the original joint applications of the applications of 29 applicants. These applications were administratively dealt with individually. After some time 37 applications, 21 of which included names of those mentioned above and 16 others not part of the original 29 were submitted by staff to a panel of the Amnesty Committee. The notice attached to the original 29 applications, appears not to have been placed on all the files. This resulted in 8 of the original 29 applications intended for joint consideration not being included amongst the 37.

The granting of Amnesty to the 37 and the subsequent court proceedings, are matters of history. What is however important, is that the court directed the Amnesty Committee "to consider afresh the applications for Amnesty of the third to thirty ninth respondents (the 37), including the issue of whether such applications properly comply with the relevant requirements of the Promotion of National Unity and Reconciliation Act. 34 of 1995".

The Committee decided to consider the 29 original applications received from the TRC desk of the ANC jointly and to consider the other 16 applications separately. It needs to be mentioned that a large number of further applications, similarly based and relying on the declaration, have since been lodged with the Committee. All of these will be considered separately.

The declaration on which the above applicants rely, reads as follows:

"We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the African National Congress (hereinafter referred to as the ANC), elected and/or appointed to serve in various structures including its highest organ, the National Executive Committee, do hereby make the following declaration:

1. During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.
2. In the course of our people's struggle, with the intent to induce the apartheid government of the National Party to abandon apartheid with its concomitant violent repression and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, inter alia, established its military wing, Umkhonto weSizwe, through which it prosecuted an armed struggle."
3. At all material times, Umkhonto weSizwe operated under political authority, direction and leadership of the ANC.
4. Due to its peculiar circumstances and the attacks mounted upon it by its adversary, the apartheid government, the ANC established various organs at various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.
5. Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and in some instances encouraged the establishment of Self Defence Units (SDUs), which played a critical role in the defence of defenceless communities.
6. In the event and to the extent that any of the activities of any of the above mentioned institutions and structures including the SDU's could in any manner whatsoever be regarded as the kind of acts or omissions or offences envisaged in the

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Promotion of National Unity and Reconciliation Act, "we collectively take full responsibility therefore applying for amnesty in respect thereof".

Following the court order, the Amnesty Committee made further inquiries from the ANC - TRC desk which represents at least the original 29 applicants and gave directions in respect of the attestation of the applications and requested for further particulars.

As a result of such enquiries, a letter dated the 10 November 1998 was received by the Committee from the ANC's Secretariat.

The contents thereof are as follows:

"Amnesty Committee

Truth and Reconciliation Commission

Cape Town

Dear Judge Khampepe

RE: ANC AMNESTY APPLICATION

As you are aware, during 1997, the ANC applied for amnesty for a group of 29 of its leaders.

The list was conveyed in a communication dated 9 May 1997 which apparently had a list of 30. However, the list contained a mistake in that the name of ZP Tolo appears twice on the lists. (We attach the list for ease of reference).

The application was launched in keeping with the ANC commitment made in its submission to the Human Rights Violations Committee of the TRC that its leadership would take collective responsibility for the bona fide activities of members of the organisation.

The ANC consciously and deliberately took this position in order to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act.

More specifically, the leadership of the ANC was determined then, as it is now, not to abandon or desert the thousand(s) of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary.

The leadership also hoped that by making this application, it would lead its members by example, encouraging those affected to follow in its footsteps.

The group selected to apply for amnesty was not the complete list of the leadership of the ANC during the mandate period of the ANC.

It was representative of a group of this leadership, chosen in a manner consistent with the definition of "the leadership of the ANC" by the Human Rights Committee.

This overall leadership is reflected in Appendix One of the May 1997 "Further Submission and Responses by the African National Congress to Questions Raised by the Commission for Truth and Reconciliation". (pp 34-56).

Accordingly, the list of 29 covered the period 1960-94 and included people who had been members of various committees of the ANC, from the NEC downwards.

[Handwritten signature]

Further, the group was also selected on the basis that, to the knowledge of the ANC, none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty.

From the foregoing, it should be clear that "the 29" would not be able to answer any questions which sought to establish the specific acts for which they were applying for amnesty, since there are none.

It also seems clear that there are other leaders of the ANC who applied for amnesty on their own and in the same way as "the 29" who would also not be able to supply specific information as they applied in furtherance of the collective responsibility assumed by the leadership of the ANC.

The ANC would be willing to join these to "the 29", after having established in each case that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act.

Contrary to what has been falsely argued, the ANC never sought a "blanket amnesty" for leadership of the ANC, in bona fide belief that each one of "the 29" would stand any detailed scrutiny with regard to whether they were culpable of any gross violation of human rights, within the meaning of the provisions relating to the granting of amnesty.

As the records of the Amnesty Committee will show, though some of the names are common to both, our list of "the 29" is not the same as the list of 37 which the Committee seemed to have considered.

We are therefore uncertain as to whether the selection of those among "the 37" other than "the 29" was based on the same criteria as were used when "the 29" were selected.

Accordingly, we would humbly suggest that the Amnesty Committee should consider "the 29" or any new list which might be drawn up, which would include other leaders of the ANC who have applied for amnesty, as reflected above.

We trust that this letter will help you and the Committee in its work. We are ready further to assist the Committee as it requires, according to our ability. We therefore look forward to hearing from you in due course.

Yours sincerely

DEPUTY SECRETARY GENERAL"

Subsequent to receiving this letter the Applications of Mokoape and Mafu have been withdrawn from the list, bringing the total number for joint consideration down to 27.

ISSUES

In our view there are two principal issues to be considered in these applications.

The first issue relates to the reliance by the applicants on the declaration quoted herein above. The thrust of the declaration is that the applicants collectively take full responsibility for the activities of their institutions or structures and apply for amnesty "in the event and to the extent that any of the activities of these institutions and structures could in any way whatsoever be regarded as acts/omissions or offences envisaged in the Act".

The cardinal point for consideration is whether this Committee can grant amnesty to the applicants for acts committed by members of the various structures (which acts they are unaware of) on the basis of collective political and moral responsibility.

The second issue relates to whether the applications, as amplified in terms of the letter of the 10th November 1998, disclose any specific act that constitutes an offence or delict.

We therefore accordingly proceed to deal with these issues *seriatim*.

Having regard to the declaration it is quite evident that the individual applicants apply for amnesty not because they committed any acts that could constitute an offence or a delict but do so solely because they are persons who were either in the leadership of the ANC at various times between 1960 to 1994, or were members of the structures established by the ANC in order to wage a struggle against the NP led government and therefore take collective responsibility for the acts committed by their members in the various structures which acts were committed under the ANC's political authority, direction and leadership. They accordingly assume political and moral accountability for such acts.

It is appropriate at this stage to refer to the sections for the granting of amnesty as contained in the Act. Section 20 (1) stipulates as one of the requirements for amnesty that "the act, omission or offence" in respect of which amnesty is sought must be an "act associated with a political objective". Section 20 (1) (c) stipulates that the applicant must make a full disclosure of all the relevant facts in respect of the "act, omission or offence for which amnesty is sought. Section 20 (2) then steps in to define an "act associated with a political objective". It states that an "act associated with a political objective means an act or omission which constitutes an offence or a delict which according to the criteria in subsection (3), is associated with a political objective,...". It is clear from these sections that for an applicant to qualify for amnesty he should have committed an act which constitutes a delict or offence; he should fully disclose, *inter alia*, the nature and extent of his participation in respect of the offence or delict for which he seeks amnesty and provide other relevant facts which will be used by the Committee in its application of the prescribed criteria contain in Section 20(3) in determining whether or not a particular act, omission or offence qualifies for amnesty.

The applicants' applications are founded on collective responsibility for acts committed by their members in the event and to the extent that such acts are found to be acts associated with a political objective. In as much as the applicants are to be commended for taking such a noble step of publicly taking collective responsibility in the manner they have done, it was not the intention of the legislature to extend amnesty to the applicants merely on the basis of collective responsibility as the applicants seek to do. The sections dealing with the granting of amnesty are quite clear and unambiguous. The individual applicant must, *inter alia*, fully disclose a specific offence or delict advised, planned, directed, commanded, ordered or committed by herself/himself in order to qualify for amnesty. In the case of the applicants it is quite evident that they are not aware of all the acts committed by their members and one can comprehend their conundrum in this regard.

It is further evident that from the declaration and the letter relied upon by the individual applicants the applications sought to apply not as individuals in their personal capacities but in their capacity as "a representative group of the ANC leadership" for the period 1960 to 1994.

It is instructive to point out that the Act does not provide *locus standi* to Liberation Movements, Political Organisations of the State to apply for amnesty for acts associated with a political objective as defined in the sections quoted herein above. These juristic entities are nevertheless immune from both criminal and civil liability in terms of Section 20 (7) (a), once "a person" has been granted amnesty in respect of an act, omission or offence. In the case of the ANC, once a member or supporter of that organisation has been granted amnesty for an act, offence or omission, the ANC is indemnified against any criminal and civil liability for the acts of the wrongdoer (who has been granted amnesty) which could have arisen in consequence of its vicarious liability for such an act, omission or offence. The State is equally discharged from any civil liability if its employee has been granted amnesty for any act, omission or offence in circumstances where it could have been held vicariously liable.

It therefore follows that the ANC will not be held vicariously liable for the acts that the applicants might have intended to cover through their applications and for which they take collective responsibility once amnesty is granted in respect of acts committed by them in their various structures set up by the ANC leadership at various times.

Having said that, it needs to be mentioned that the ANC will be so indemnified only to the extent that their members have been granted amnesty for specific acts. It is trite that notwithstanding the lack of *locus standi* to these juristic entities, no provision has been made in the Act to extend indemnification to such bodies as

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the ANC or the State in circumstances where their members have not applied and have not been granted amnesty for acts associated with a political objective.

The second and fundamental issue that we have to consider is whether the applications of the individual applicants comply with the requirements of the Act at all, in terms of Section 18 and 20(1) of the Act.

Section 19(1) which deals with applications for granting of amnesty provides that:

"Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in Section 7 (3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form".

Section 20(1) which deals with the granting of amnesty provides that:

"If the Committee, after considering an application for amnesty, is satisfied that:

- (a) the application complies with the requirements of this Act;
- (b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and
- (c) the applicant has made a full disclosure of all relevant facts, it shall grant amnesty in respect of that act, omission or offence."

Section 20 (2) further defines an act associated with a political objective as follows:

In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act of omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date.

Having regard to the provisions of Section 20(1)(a)(b) and Section 20(2) it is quite clear that an application will only comply with the requirements of the Act if it discloses an act which constitutes an offence or delict (Section 20(2) for which an applicant has made a full disclosure in terms of Section 20(1)(c).

None of the applicants have disclosed any such act, omission or offence. On the contrary, pursuant to the enquiries made by this Committee in terms of Section 19, the applications as amplified in the letter quoted herein above, categorically state that "none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty"; "...that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act", that they do not have to apply for amnesty for "specific acts...since there are none".

According to the amplification the stated reasons for the applications were that the leadership of the ANC was determined then as at present, to:

Show its determination "not to abandon or desert the thousand(s) of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary."

"Lead its members by example, encouraging those affected to follow in its footsteps" by applying for amnesty.

"...to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act".

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The Committee notes the reasons advanced by the ANC. Unfortunately no matter how noble and commendable these reasons may be, they clearly demonstrate that these applications do not comply with the requirements of the Act as no act, omission or offence is the subject of the applications as required by Section 18(1) of the Act. The applications do not relate to any specific act, omission or offence. On their own admission none of the applicants have been involved in any act "for which they would require to apply for amnesty". In the premises, no amnesty can be granted to the applicants because in terms of what is before the Committee they have committed no offence or delict.

The intention of the applicants to support the thousands of cadres did not warrant an application of this nature. It would have been sufficient for the applicants to support their members' applications for amnesty where necessary without themselves applying for amnesty for the acts of such members. That it was never envisaged by the Act to have persons such as the applicants applying for amnesty on the basis of collective responsibility or for the aforementioned reasons is to be found in Section 20(7)(a) which has already been discussed herein above.

FINDINGS

It is our finding that:

Insofar as the applicants seek to apply for amnesty for acts committed by their members in the various institutions and structures on the basis of collective political and moral responsibility, their applications fall outside the ambit of the act and accordingly they do not require to apply for amnesty.

Insofar as the applications read with the amplification are concerned, we find that **NO AMNESTY CAN BE GRANTED** to the applicants because:

1. On their own version they have committed no offence or delict in terms of the Act.
2. Their applications do not relate to any specific act, omission or offence in terms of Section 20(1) and therefore do not fall within the ambit of the Act.

CONCLUSION

In the premises the applications do not comply with the requirements of the Act and **NO AMNESTY IS GRANTED**.

(Signed)

JUDGE S KHAMPEPE

JUDGE S MILLER

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ANNEXURE "TMM 5"

November 28, 1997

AMNESTY GRANTED TO 43 PEOPLE**STATEMENT FROM THE TRUTH AND RECONCILIATION COMMISSION**

Issued by: Truth and Reconciliation Commission

The Amnesty Committee of the Truth and Reconciliation Commission has granted amnesty to 43 people after considering their applications in chambers.

Amnesties have been granted to:

- 37 members of the ANC, including Deputy President Thabo Mbeki, Defence Minister Joe Modise and other members of the Cabinet;
- Five right-wing applicants; and
- Trevor Thamsanqa Tutu.

The law governing the TRC provides that:

"The [Amnesty Committee] may, if it is satisfied that--

(i) the requirements mentioned in Section 20 (1) [the section of the Act laying down conditions for amnesty] have been complied with;

(ii) there is no need for a hearing; and

(iii) the act, omission or offence to which the application relates, does not constitute a gross violation of human rights,

in the absence of the applicant and without holding a hearing, grant amnesty and inform the applicant accordingly.

Copies of the 43 amnesty application forms are available from the TRC's Cape Town office. [and will hopefully be available on the website soon]

PROCLAMATION IN TERMS OF SECTION 20(6) OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, 1995 (ACT NO. 34 OF 1995)

Notice is hereby given that amnesty in terms of Section 20(1) of Act No. 34 of 1995 was granted on 28th November 1997 to the following persons for all offences associated with a political objective as defined by the Act, and which fall within the ambit of the Act committed or authorised by him/her as a member of the African National Congress and on its behalf during the period/s:-

A.

i) 1st March 1960 to 10th May 1994

- January Boy Masilela;
- Dumisani Henry Makhaye;
- Lord Wilfred Hendrick Matsane;
- Colin Cecil Coleman;
- Charles Nqakula;

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- Barry Philip Gilder;
- Abdulah Mohamed Omar;
- Basil Kenyon Dumisani Mafu;
- Mongane Wally Serote;
- Baleka Mmakota Mbete--Kgositsile;
- Peter Ramoshoane Mokaba;
- Nosiviwe Noluthando Mapisa;
- Thabo Mvuyelwa Mbeki;
- Sathyandranath R. Maharaj;
- Jacob Gedleyihlekisa Zuma;
- John Kgoana Nkademeng;
- P.R.F Mdhuli-Sedibe;
- Lambert Lehlohonolo Moloi;
- Billy Lesedi Masetlha;
- Ruth Segomotsi Mompati;
- Jacob Sello Selebi;
- Zweledinga Pallo Jordan;
- Garth Richard Strachan;
- Essop Goolam Pahad;
- Nakedi Mathews Phosa;
- Pravin Jannadas Gordhan;
- Sipho Sidney Makana;
- Alfred Nzo;

ii) 1961 to 1993

- Joe Johannes Modise

iii) 1962 to 1985

- Andrew Mandla Lekoto Masondo

iv) 1970 to 10th May 1994

- Lincoln Vumile Ngculu

v) 1976 to 1978

- Snuki Joseph Zikalala

vi) 1978 to 1981 ~

- Keith Matila Mokoape

vii) 1978 to 10th May 1994

- Joseph Mbuku Nhlanhla

viii) 1983 to 1993

- Dr Biki Samuel Victor Minyuku

ix) 1984 to 1994

- Mtikeni Patrick Sibande

BM

x) 1986 to 1989 ~

- Johannes Mudimu

B.

Amnesty in terms of Section 20(1) of Act No. 34 of 1995, was granted on the 28th November 1997 to the following persons in respect of the acts, offences, omissions and delicts flowing from and connected with the illegal Pietersburg and Cosatu House, Paul Kruger Street, Pretoria during the period 1990 to 1992:-

- i) DIETER STOLS (Identity No. 580601 5061 00 0)
- ii) FREDERIK HENDRIK GEYSER (Identity No. 600504 5047 00 1)
- iii) PIETER BESTER (Identity No. 650330 5063 08 0)
- iv) THEUNIS HANNES GERBER (Identity No. 690717 5037 08 4)
- v) WILHELM JOHAN ELS (Identity No. 510909 5006 00 7)

C.

Amnesty in terms of Section 20(1) of Act No. 34 of 1995, was granted on the 28th November 1997 to

TREVOR ARMSTRONG THAMSANQA TUTU (Passport No. L4719)

in respect of the contravention of Section 2(2)(b) and Section 2(1)(g) read with Section 1 of the Civil Aviation Act No. 10 of 1972 at East London on the 8th October 1989 and in respect of which he was sentenced in the Regional Court at East London under Case, Number SH 2/229/89 and any other offences or omissions flowing from the aforementioned contravention.

[This declaration was attached to the amnesty application of the ANC leaders]

Declaration

We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the AFRICAN NATIONAL CONGRESS (hereinafter referred to as the ANC), elected and/or appointed to serve in various structures including its highest organ, the NATIONAL EXECUTIVE COMMITTEE, do hereby make the following declaration:

1. During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.
2. In the course of our people's struggle, with the intent to induce the apartheid government of the NATIONAL PARTY to abandon apartheid with its concomitant violent repression, and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, inter alia, established its military wing, UMKHONTO WE SIZWE, through which it prosecuted an armed struggle.
3. At all material times, UMKHONTO WE SIZWE operated under political authority, direction and leadership of the ANC.
4. Due to its peculiar circumstances, and the attacks mounted upon it by its adversary, the apartheid government,

Handwritten signature
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the ANC established various organs at various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.

5. Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and, in some instances encouraged the establishment of Self Defence Units (SDUs), which played a critical role in the defence of defenceless communities.

6. In the event, and to the extent that, any of the activities of any of the abovementioned institutions and structures including the SDU's could in any manner whatsoever be regarded as the kind of acts or omissions or offences envisaged in the PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, we collectively take full responsibility therefore applying for amnesty in respect thereof.

ends

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ANNEXURE "TMM 6"

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STAATSKOERANT, 23 MEI 2003

No. 24878 9

No. 46, 2003

NATIONAL PROSECUTING AUTHORITY ACT, 1998**Determination of Powers, Duties and Functions of a Special Director of Public Prosecutions**

Under section 13(1)(c) of the National Prosecuting Authority Act, 1998(Act No. 32 of 1998), I, hereby confer, impose and assign the following powers, duties and functions on or to Advocate **ANTON ROSSOUW ACKERMAN, SC**, a Special Director of Public Prosecutions, appointed in terms of the said provisions:

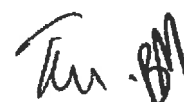
To exercise the powers, carry out the duties and perform the functions necessary, within the Office of the National Director of Public Prosecutions as directed by the National Director and—

- (a) In particular to head the **Priority Crimes Litigation Unit** and to manage and direct the investigation and prosecution of crimes contemplated in the Implementation of the Rome Statute of the International Criminal Court Act, 2002(Act No. 27 of 2002), and serious national and international crimes, which include acts of terrorism and sabotage committed under the Internal Security Act, 1982(Act No. 74 of 1982), high treason, sedition, foreign military crimes committed by mercenaries, or such other priority crimes to be determined by the National Director;
- (b) generally giving such advice or rendering such assistance to the National Director as may be required to exercise the powers, carry out the duties and perform the functions which are conferred or imposed on or assigned to him by the Constitution or any other law.

Given under my Hand at **PRETORIA** on this 24TH day of March Two Thousand and Three.

T. M. MBEKI
President

P. M. MADUNA
Minister of the Cabinet



ANNEXURE "TMMT"

STATEMENT BY PRESIDENT THABO MBEKI TO THE NATIONAL HOUSES OF PARLIAMENT AND THE NATION, ON THE OCCASION OF THE TABLING OF THE REPORT OF THE TRUTH AND RECONCILIATION COMMISSION: CAPE TOWN, APRIL 15, 2003.

Madame Speaker and Deputy Speaker;
Chairperson and Deputy Chairperson of the Council of Provinces;
Deputy President;
Chief Justice and Members of the Judiciary;
Former Members of the Truth and Reconciliation Commission;
Ministers and Deputy Ministers;
Distinguished Premiers;
Honoured Traditional Leaders;
Leaders of the Chapter Nine Institutions;
Honourable Leaders of our Political Parties;
Your Excellencies, Ambassadors and High Commissioners;
Honourable Members;
Distinguished Guests;
Fellow South Africans:

We have convened today as the elected representatives of the people of South Africa to reflect on the work of the Truth and Reconciliation Commission, to examine its Recommendations and to find answers, in practical terms, to the question - where to from here!

We wish to acknowledge the presence of Commissioners of the erstwhile TRC, who took time off their busy schedules to join us in commending the Report to our national parliament.

I am confident that I speak on behalf of all Honourable Members when I say to these Commissioners, and through them, to Archbishop Desmond Tutu and the other Commissioners not present here today, that South Africa sincerely appreciates the work that they have done. Our thanks also go to the staff of the Commission and all who contributed to the success of the work of the TRC, which we are justified to celebrate today.

They did everything humanly possible to realise the objectives of a process novel in its conception, harrowing in its execution and, in many respects, thankless in balancing expectation and reality. Our assessment of the TRC's success cannot therefore be based on whether it has brought contrition and forgiveness, or whether at the end of its work, it handed us a united and reconciled society. For this was not its mandate. What the TRC set out to do, and has undoubtedly achieved, is to offer us the signposts in the Long March to these ideals.

What it was required to do and has accomplished, was to flag the dangers that can beset a state not premised on popular legitimacy and the confidence of its citizens, and the ills that would befall any society founded on prejudice and a belief in a "master race".

The extent to which the TRC could identify and pursue priority cases; its ability to bring to its hearings all relevant actors; the attention that it could pay to civil society's role in buttressing an illegitimate and illegal state; and the TRC's investigative capacity to pursue difficult issues with regard to which the actors had decided to spurn its call for co-operation - all these weaknesses were those of society and not the TRC as such.

And, we make bold to say that all these complexities make the product of the work of the TRC that much more outstanding and impressive.

The pain and the agony that characterised the conflict among South Africans over the decades, so vividly relived in many hearings of the Commission, planted the seed of hope - of a future bright in its humanity and its sense of caring.

It is a future whose realisation gave life to the passion for the liberation of our people, of Oliver Tambo and Chris Hani, the tenth anniversary of whose passing away we mark this month. This includes others such as Robert Mangaliso Sobukwe and Steve Bantu Biko, who passed away 25 years ago this year and last year respectively. They joined and have since been joined by many other patriots to whom freedom meant life itself.

We are indebted to all of them; and we shall work to ensure that their memory lives on in the minds of generations to come, inspired by our common determination that never again should one South African oppress another!

At a critical moment in our history, as a people, we came to the conclusion that we must, together, end the killing. We took a deliberate decision that a violent conflict was neither in the interest of our country nor would it solve our problems.

Together, we decided that in the search for a solution to our problems, nobody should be demonised or excluded. We agreed that everybody should become part of the solution, whatever they might have done and represented in the past. This related both to negotiating the future of our country and working to build the new South Africa we had all negotiated.

We agreed that we would not have any war crimes tribunals or take to the road of revenge and retribution.

Thabo Mbeki

When Chris Hani, a great hero of our people was murdered, even as our country was still governed by a white minority regime, we who represented the oppressed majority, said let those who remained in positions of authority in our country carry out their responsibility to bring those who had murdered him to book. We called on our people neither to take the law into their hands nor to mete out blind vengeance against those they knew as the beneficiaries of apartheid oppression.

We imposed a heavy burden particularly on the millions who had been the victims of this oppression to let bygones be bygones. We said to them – do not covet the material wealth of those who benefited from your oppression and exploitation, even as you remain poor.

We walked among their ranks saying that none among them should predicate a better future for themselves on the basis of the impoverishment of those who had prospered at their expense. We said to them that on the day of liberation, there would be no looting. There would be celebrations and no chaos. We said that as the majority, we had a responsibility to make our day of liberation an unforgettable moment of joy, with none condemned to remember it forever as a day of bitter tears.

We said to our people that they should honour the traditions they had built and entrenched over centuries, never to hate people because of their colour or race, always to value all human beings, and never to turn their backs on the deeply-entrenched sentiment informed by the spirit of ubuntu, to forgive, understanding that the harm done yesterday cannot be undone today by a resolve to harm another.

We reminded the masses of our people of the values their movement for national liberation had upheld throughout a turbulent century, of everything they had done to defend both this movement and its values, of their obligation never to betray this noble heritage. Our people heeded all these calls.

By reason of the generosity and the big hearts of the masses of our people, all of us have been able to sleep in peace, knowing that there will be no riots in our streets. Because these conscious masses know what they are about, the Truth and Reconciliation Commission was able to do its work enjoying the cooperation of those who for ages had upheld the vision of a united humanity, in which each would be one's brother and sister. These are an heroic people whose greatest reward is the liberation of their country.

Of them, the TRC says: "Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle... Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness... Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures... The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."

Some of these, who had to go through the torture chambers of the apartheid regime to bring us our liberty, are with us in this chamber today. There are others who sit on the balcony as visitors, who lost their loved ones whom they pride as liberators, and others who also suffered from repression.

Surely, all of us must feel a sense of humility in the face of such selfless heroism and attachment to principle and morality, the assertion of the nobility of the human spirit that would be demeaned, denied and degraded by any suggestion that these heroes and heroines are but mere 'victims', who must receive a cash reward for being simply and deeply human.

I know there are some in this House who do not understand the meaning of what I have just said. They think I have said what I have said to avoid the payment of reparations to those whom the TRC has identified as 'victims', within the meaning of the law.

Indeed, the TRC itself makes the gratuitous comment (para 16, p 163, Vol 6) that: "Today, when the government is spending so substantial a portion of its budget on submarines and other military equipment, it is unconvincing to argue that it is too financially strapped to meet this minimal (reparations) commitment."

Apart from anything else, the government has never presented such an argument. It is difficult to understand why the Commission decided to make such a statement.

Elsewhere in Vol 6, the Rev Frank Chikane, Director General in the Presidency and former General Secretary of the South African Council of Churches, is falsely reported as having made a presentation to the Amnesty Committee, which he never did.

He is then said to have told this Committee that he had participated in killing people. We do not understand how this grave and insulting falsification found its way into the Report of the TRC. We are pleased to report that Archbishop Tutu has written to Rev Chikane to apologise for this inexplicable account.

The poet, Mongane Wally Serote teaches us: 'to every birth its blood'. And so, today we acknowledge the pain that attended the struggle to give birth to the new life that South Africa has started to enjoy. In this era of increased geopolitical tension, we dare celebrate as South Africans that we found home-grown solutions that

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set us on a course of reconstruction and development, nation-building, reconciliation and peace among ourselves.

At this time, when great uncertainty about the future of our common world envelops the globe, we dare stand on mountain-tops to proclaim our humble contribution to the efforts of humanity to build a stable, humane and safer South Africa, and by extension, a more stable, more humane and safer world.

Honourable Members;

If we should find correct answers to the question, where to from here, we will need to remind ourselves of the objectives of the TRC from its very inception, so aptly captured in the preamble to the Promotion of National Unity and Reconciliation Act:

"...the Constitution of the Republic of South Africa, 1993 provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex;
 "...the Constitution states that 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;
 "...it is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;
 "...the Constitution states 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 victimisation".

I am certain that we are all at one that the pursuit of national unity, the well-being of all South African citizens and peace, require reconciliation among the people of South Africa and the reconstruction of our society.

These are the larger and fundamental objectives that should inform all of us as we work to give birth to the new South Africa. The occasion of the receipt of the Report of the TRC should give us an opportunity to reflect on these matters.

Both singly and collectively, we should answer the question how far we have progressed in the last nine years towards the achievement of the goals of national unity, national reconciliation and national reconstruction. Both singly and collectively, we have to answer the question, what have we contributed to the realisation of these goals.

These larger questions, which stand at the heart of what our country will be, did not fall within the mandate of the Truth and Reconciliation Commission. The TRC was therefore but an important contributor to the achievement of the larger whole, occupying an important sector within the larger process of the building of a new South Africa.

As stated in the Act, the TRC had to help us to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights occurred, and to make the findings known in order to prevent a repetition of such acts in future.

It had to help us to promote understanding and avoid vengeance, to extend reparation to those who had been harmed and discourage retaliation, to rely on the spirit of ubuntu as a deterrent against victimisation. The TRC has done its work as was required. As stipulated in the TRC Act, we are here to make various recommendations to our national parliament, arising out of the work of the TRC.

As the Honourable Members are aware, there is a specific requirement in the law that parliament should consider and take decisions on matters relating particularly to reparations. It would then be the task of the Executive to implement these decisions.

The law also provides that the national legislature may also make recommendations to the Executive on other matters arising out of the TRC process, as it may deem fit.

Let us now turn to some of the major specific details that the TRC enjoins us to address.

The first of these is the matter of reparations.

First of all, an integrated and comprehensive response to the TRC Report should be about the continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social programmes, improving citizens' safety and security and contributing to the building of a humane and just world order.

The TRC also argues for systematic programmes to project the symbolism of struggle and the ideal of freedom. This relates to such matters as academic and informal records of history, remaking of cultural and art forms, erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names. The government accepts these recommendations.

Special emphasis will continue to be paid to rehabilitation of communities that were subjected to intense acts of violence and destruction. Experience gained with the projects in Katorus in Gauteng and Mpumalanga in KwaZulu/Natal demonstrates that great progress can be made in partnership between communities and government.

Th. BM

Further, with regard to specific cases of individual victims identified by the TRC Act, government has put in place and will intensify programmes pertaining to medical benefits, educational assistance and provision of housing and so on. From time to time, Ministers have elaborated and will continue to expatiate on the implementation of these and other related programmes.

The TRC has reported that about 22 000 individuals or surviving families appeared before the Commission. Of these, about 19 000 required urgent reparations, and virtually all of them, where the necessary information was available, were attended to as proposed by the TRC with regard to interim reparations.

With regard to final reparations, government will provide a once-off grant of R30 000 to those individuals or survivors designated by the TRC. This is over and above other material commitments that we have already mentioned.

We intend to process these payments as a matter of urgency, during the current financial year. Combined with community reparations, and assistance through opportunities and services we have referred to earlier, we hope that these disbursements will help acknowledge the suffering that these individuals experienced, and offer some relief.

We do so with some apprehension, for as the TRC itself has underlined, no one can attach monetary value to life and suffering. Nor can an argument be sustained that the efforts of millions of South Africans to liberate themselves, were for monetary gain. We are convinced that, to the millions who spared neither life nor limb in struggle, there is no bigger prize than freedom itself, and a continuing struggle to build a better life for all.

The second of the specific details in the TRC recommendations pertains to the issue of amnesty. A critical trade-off contained in the TRC process was between "normal" judicial processes on the one hand, and establishment of the truth, reparations and amnesty on the other.

Besides the imperatives of managing the transition, an important consideration that had to be addressed when the TRC was set up, was the extent to which the new democratic state could pursue legal cases against perpetrators of human rights violations, given the resources that would have to be allocated to this, the complexities of establishing the facts beyond reasonable doubt, the time it would take to deal with all the cases, as well as the bitterness and instability that such a process would wreak on society.

The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty – in instances where perpetrators had provided the true facts about particular incidents – and restorative justice which would be effected in the form of reparations. Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter?

Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past, but also in the creation of a new ethos within our society.

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.

This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts.

It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity.

TM BM

This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts.

Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action.

Relevant Departments are examining the practical modalities of dealing with this matter, and they will also establish whether specific legislation is required in this regard.

We shall also endeavour to explain South Africa's approach on these matters to sister-governments across the world. Our response to any judicial matters from these countries will be handled in this spirit and through the legal system. In this regard, we wish to reiterate our call to governments that continue to do so, that the maltreatment of former anti-apartheid fighters, based on the legal definitions of an illegal regime characterised by the United Nations as a crime against humanity, should cease.

In the recent past, the issue of litigation and civil suits against corporations that benefited from the apartheid system has sharply arisen. In this regard, we wish to reiterate that the South African Government is not and will not be party to such litigation.

In addition, we consider it completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country and the observance of the perspective contained in our constitution of the promotion of national reconciliation.

While Government recognises the right of citizens to institute legal action, its own approach is informed by the desire to involve all South Africans, including corporate citizens, in a co-operative and voluntary partnership to reconstruct and develop South African society. Accordingly, we do not believe that it would be correct for us to impose the once-off wealth tax on corporations proposed by the TRC.

Consultations are continuing with the business community to examine additional ways in which they can contribute to the task of the reconstruction and development of our society, proceeding from the premise that this is in their own self-interest. In addition to intensifying work with regard to such tasks as poverty eradication, and programmes such as Black Economic Empowerment, encouraging better individual corporate social responsibility projects, implementation of equity legislation and the Skills Training Levy, we intend to improve the work of the Business Trust.

In this context, we must emphasise that our response to the TRC has to be integrated within the totality of the enormous effort in which we are engaged, to ensure the fundamental social transformation of our country. This requires that at all times, we attain the necessary balance among the various goals we have to pursue.

The TRC also recommends that what it describes as the beneficiaries of apartheid should also make contributions to a reparation fund. The government believes that all South Africans should make such contributions. In the pursuit of the goal of a non-racial society, in which all South Africans would be inspired by a common patriotism, we believe that we should begin to learn to work together, uniting to address the common national challenges, such as responding to the consequences of the gross violations of human rights of which the TRC was seized.

In this regard, I am certain that members of our government will be among the first to make their contributions to the reparation fund, despite the fact that they stood on one side of the barricades as we engaged in struggle to end the apartheid system.

Many in our country have called for a National Day of Prayer and Traditional Sacrifice to pay tribute to those who sacrificed their lives and suffered during the difficult period of oppression and repression whose legacy remains with us. The government accepts this suggestion and will consult as widely as possible to determine the date and form of such prayer and traditional sacrifice. This is consistent with and would be an appropriate response to the proposals made by the TRC for conferences to heal the memory and honour those who were executed.

We shall also continue to work in partnership with countries of the sub-continent, jointly to take part in the massive reconstruction and development effort that SADC has identified as critical to building a better life for all. The peoples of Southern Africa, including the majority in South Africa endured untold privations and were subjected to destabilisation and destruction of property and infrastructure. They all deserve the speeding up of programmes of integration, reconstruction and development that governments of the region have agreed upon.

Madame Speaker,
The Truth and Reconciliation Commission has made many detailed observations and recommendations on structures and systems, which will be dealt with by relevant Ministers and Departments.

For the purpose of reparations, the government has already established the President's Fund, which is now operational, and has, as we earlier indicated, successfully dealt with the matter of urgent reparations. Like the TRC, we do hope that citizens from all sectors will find it within themselves to make a contribution to this Fund. Most of the resources that have been allocated for individual and community reparations that we referred to above will be sourced from this Fund, over

and above the normal work of the relevant Departments.

We concur with the TRC that intensive work should be undertaken on the matter of monuments as well as geographic and place names. A Trust with the requisite infrastructure, headed by Mongane Wally Serote has been set up to implement the main project in this regard, which is the construction of the Freedom Park whose constituent parts are the Memorial, the Garden of Remembrance and the Museum. This should start by the tenth anniversary of freedom in 2004.

The National Directorate of Public Prosecutions and relevant Departments will be requested to deal with matters relating to people who were unaccounted for, post mortem records and policy with regard to burials of unidentified persons. We would like to encourage all persons who might have any knowledge of people still unaccounted for to approach the National Directorate of Public Prosecutions, the South African Police Service and other relevant departments.

The Department of Justice and Constitutional Development will monitor the implementation of all these programmes, and it will report to Cabinet on an on-going basis.

What we have identified today, arising out of the report of the TRC, forms part of the panoply of programmes that define the first steps in a journey that has truly begun. South African society is changing for the better. The tide has turned and the people's contract for a better tomorrow is taking shape. The goals we defined for ourselves a decade ago, as we adopted the Interim Constitution, to pursue national unity, to secure peace and the well-being of all South African citizens, to achieve national reconciliation and the reconstruction of our society, have not fully been realised, despite the progress we have made.

The situation we face demands that none of us should succumb to the false comfort that now we live in a normal society that has overcome the legacy of the past, and which permits us to consider our social tasks as mere business as usual.

Rather, it demands that we continue to be inspired by the determination and vision that enabled us to achieve the transition from apartheid rule to a democratic order in the manner that we did. It demands that we act together as one people to address what are truly national tasks.

We have to ask ourselves and honestly answer simple questions.

Have we succeeded to create a non-racial society! The answer to this question is no!

Have we succeeded to build a non-sexist society! The answer to that question is no!

Have we succeeded to eradicate poverty! Once more the answer to that question is no!

Have we succeeded fully to address the needs of the most vulnerable in our society, the children, the youth, people with disabilities and the elderly! Once again the answer to this question is no!

Without all this, it is impossible for us to claim that we have met our goals of national reconciliation and reconstruction and development. It is not possible for us to make the assertion that we have secured the well-being of all South African citizens.

The road we have travelled and the advances we have made convey the firm message that we are moving towards the accomplishment of the objectives we set ourselves. They tell us that, in the end, however long the road we still have to travel, we will win.

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.

I am honoured to commend the Report of the Truth and Reconciliation Commission to our National Houses of Parliament and the nation.

Thank you.

Th. BM

ANNEXURE "TMM 8"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

THABO MVUYELWA MBEKI1st Applicant**BRIGITTE SYLVIA MABANDLA**2nd Applicant

And

LUKHANYO BRUCE MATTHEWS CALATA1st Respondent**ALEGRIA KUTSAKA NYOKA**2nd Respondent**BONAKELE JACOBS**3rd Respondent**FATIEMA HARON MASOET**4th Respondent**TRYPHINA NOMANDLOVU MOKGATLE**5th Respondent**KARL ANDREW WEBER**6th Respondent**KIM TURNER**7th Respondent**LYNDENE PAGE**8th Respondent**MBUSO KHOZA**9th Respondent**NEVILLE BELING**10th Respondent**NOMBUYISELO MHLAULI**11th Respondent**SARAH BIBI LALL**12th Respondent**SIZAKELE ERNESTINA SIMELANE**13th Respondent**SINDISWA ELIZABETH MKONTO**14th Respondent**STEPHANS MBUTI MABELANE**15th Respondent**THULI KUBHEKA**16th Respondent**HLEKANI EDITH RIKHOTSO**17th Respondent**TSHIDISO MOTASI**18th Respondent**NOMALI RITA GALELA**19th Respondent

Tm. G. 11 04-1

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PHUMEZA MANDISA HASHE
MKHONTOWESIZWE GODOLOZI
MOGAPI SOLOMON TLHAPI
FOUNDATION FOR HUMAN RIGHTS
GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA
MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
MINISTER OF POLICE
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN
POLICE SERVICE

20th Respondent

21st Respondent

22nd Respondent

23rd Respondent

24th Respondent

25th Respondent

26th Respondent

27th Respondent

28th Respondent

29th Respondent

In re:

LUKHANYO BRUCE MATTHEWS CALATA
ALEGRIA KUTSAKA NYOKA
BONAKELE JACOBS
FATIEMA HARON MASOET
TRYPHINA NOMANDLOVU MOKGATLE
KARL ANDREW WEBER
KIM TURNER
LYNDENE PAGE
MBUSO KHOZA
NEVILLE BELING
NOMBUYISELO MHLAULI
SARAH BIBI LALL
SIZAKELE ERNESTINA SIMELANE

1st Applicant

2nd Applicant

3rd Applicant

4th Applicant

5th Applicant

6th Applicant

7th Applicant

8th Applicant

9th Applicant

10th Applicant

11th Applicant

12th Applicant

13th Applicant

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SINDISWA ELIZABETH MKONTO

STEPHANS MBUTI MABELANE

THULI KUBHEKA

HLEKANI EDITH RIKHOTSO

TSHIDISO MOTASI

NOMALI RITA GALELA

PHUMEZA MANDISA HASHE

MKHONTOWESIZWE GODOLOZI

MOGAPI SOLOMON TLHAPI

FOUNDATION FOR HUMAN RIGHTS

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

**MINISTER OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT**

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

MINISTER OF POLICE

**NATIONAL COMMISSIONER OF THE SOUTH AFRICAN
POLICE SERVICE**

14th Applicant

15th Applicant

16th Applicant

17th Applicant

18th Applicant

19th Applicant

20th Applicant

21st Applicant

22nd Applicant

23rd Applicant

1st Respondent

2nd Respondent

3rd Respondent

4th Respondent

5th Respondent

6th Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

THABO MVUYELWA MBEKI

do hereby make oath and say:

Th. Mbeki
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Africans who are determined to subvert the process of the development of the South Africa visualised in our country's Constitution.

59. It would earn our country and people huge dividends if ways and means could be found, including *"(leaving the NPA) doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth"*, which would end the destruction caused by a group I have characterised as counter-revolutionary.

60. None of what I said in 2003 related to the cases referred by the TRC to the NPA, which the latter was expected to investigate and prosecute. Indeed, during the 2003 speech I also referred to what might, in future, be cases similar to those handled by the TRC and said:

"Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter? Let us start off by reiterating that there shall be no general amnesty"

The Rev Chikane matter

61. I deny that I interfered with any aspect concerning Rev Chikane's case. I will provide further particulars of what transpired – this requires a conversation with Rev Chikane, which I have not been able to have in the period of time I had to prepare this application.

The suspension of Adv Pikoli

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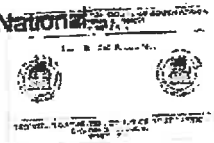
62. Sometime before 2007, possibly in 2006, the NPA and the Directorate of Special Operations (DSO) or the 'Scorpions' started investigating then National Commissioner of Police, the late Jackie Selebi, for corruption.
63. During this investigation, the National Director of Public Prosecutions, Adv Pikoli, informed me that Mr Selebi and the Police Service as a whole were obstructing his work of investigating the National Commissioner. I must add that investigations regarding the National Commissioner had nothing to do with TRC cases.
64. He asked me to help him in this regard. I convened a meeting at the offices of Crime Intelligence to address the matter reported to him by the NDPP.
65. In addition, the meeting was attended by Adv Pikoli, National Commissioner Selebi, the heads of the DSO and Crime Intelligence, and Rev Frank Chikane, the DG in the Presidency.
66. I informed the meeting that everybody had a constitutional duty to help the NPA to carry out its work. Accordingly, National Commissioner Selebi and the SAPS had a duty to help the NDPP and the DSO to carry out their work.
67. I directed that the SAPS should therefore not obstruct the NPA in its work, including during its investigation of the National Commissioner. He also directed that if any problem arose in future between the SAPS and the NPA in the context of the investigation of the National Commissioner, those concerned should report this to DG Chikane, who would inform me.



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68. During the meeting it was agreed that the DSO should have access to any relevant Crime Intelligence files. It would read these at the Crime Intelligence offices rather than take them away to study in its own offices.
69. After this meeting, nothing was ever reported to me that the SAPS were obstructing the work of the NPA.
70. The next time I had to deal with this matter was when Adv Pikoli informed me that he had a Warrant to search the SAPS Headquarters and National Commissioner Selebi's house.
71. I then asked Adv Pikoli to meet me at the Official President's residence in Tshwane, Mamelambofhu. I also invited DG Chikane to attend the meeting.
72. During the meeting, Adv Pikoli confirmed that he had applied for and obtained the said Search Warrant. He said that he had to execute it immediately or within a week.
73. I told the Adv Pikoli that (in my view), the SAPS would oppose any attempt to search its Headquarters. I also said that so bad were the relations between the SAPS and the NPA and DSO that members of the SAPS might even open fire against the NPA search team. I therefore asked Adv Pikoli to give me a fortnight within which I would engage the SAPS and take all necessary measures to ensure that the NPA and DSO carry out their searches without problems.



Handwritten signatures and initials:
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74. I also told Adv Pikoli that I was surprised that he had sought a Search Warrant, knowing very well that I was ready to intervene with the SAPS, as I had already done successfully, to help the NPA.
75. Adv Pikoli did not explain why he had opted to get a Search Warrant.
76. However, he turned down my suggestion to delay executing the Search Warrant, undertaking to engage the SAPS so that the NPA could search the SAPS Headquarters with no opposition after a fortnight.
77. He insisted that he had to execute the Search Warrant within the short period he had indicated.
78. However, he conceded that indeed there might be a shoot-out at the SAPS HQ, saying that he based himself on what had nearly happened when a DSO unit had tried to search then Deputy President Jacob Zuma's residence at Forest Town in Johannesburg.
79. During this meeting, I also expressed concern that the NPA had decided to grant immunity to the assassins of Brett Kebble as part of the process of prosecuting National Commissioner Selebi.
80. I was of the view that both the National Commissioner and the assassins should be charged for whatever offence they were responsible, without wilfully exempting people who had committed murder.
81. Adv Pikoli responded by saying that it was normal to us 'small fry' to 'catch bigger fish', which is what the NPA was doing by granting immunity to the assassins.



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82. Otherwise no argument could persuade Adv Pikoli to move away from his determination to execute the Search Warrant as he had indicated.
83. I then told Adv that I could never allow the situation where organs of State engaged each other in a shoot-out.
84. I said that to stop the NDPP from engaging in the reckless action of marching into the SAPS HQ because he was so authorised by a Search Warrant, and given that I had no power to instruct the NDPP about what he should do, my only recourse was to suspend the NDPP with immediate effect. I then went to my office in the residence, typed the suspension letter, and handed it to Adv Pikoli. After reading the letter, Adv Pikoli said that what I had done had 'lifted a lot of weight from his shoulders'.
85. I then appointed Adv Mokotedi Mpshe to the post of Acting NDPP. The Acting NDPP followed up the investigation of National Commissioner Selebi. When he was ready to arrest the National Commissioner, he informed me.
86. I engaged the SAPS as I had suggested to Adv Pikoli, again urging the National Commissioner to cooperate with the NPA.
87. I also dealt with the consequences of the impending arrest of the National Commissioner, including the appointment of an Acting National Commissioner.
88. National Commissioner Selebi surrendered himself to the relevant authorities when he was so requested by Acting NDPP Mpshe.

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ANNEXURE "TMM9"

Radio Freedom (RF) Cradock Four Speech by President Thabo Mbeki

Compatriots, tomorrow at Cradock in the Eastern Cape, we shall be burying our leaders.

Today, their names stand at the head of the list of heroic martyrs whom the enemy has murdered in cold blood as part of its continuing war of repression against the people. Today, their names are on our lips, their memory in our hearts and minds, the spears they dropped as they fell in our hands. Matthew Goniwe, Fort Calata, Sparrow Mkhonto, Sicelo Mhlauli: with raised spears pointed at the heart of the enemy who took your lives, we salute you!

We shall lay you to rest without weeping. You are warriors of the people's cause, you who, even in your death, continue the combat for the liberation of our country. We shall say a farewell of war, sound the drums that summon the living to arms, and pin your glorious names on the banners of our combat detachments.

We shall lay you to rest without weeping so that we do not blind our eyes with tears. We must keep our eyes on the enemy, aim with a steady hand, and pierce the murderers' hearts in honour of your memory, in furtherance of the cause for which you have perished.

We will not mourn, but our actions will mock the folly of our enemy, which thought that by taking you away, it would leave us demoralised, with no will to fight. We will not mourn, because for us you are not dead. You live on among us, urging and inspiring us to march without stopping and with no hesitation towards the goal of freedom for which you have sacrificed your lives.

The enemy has launched a new kind of war against us. It is kidnapping and murdering our leaders and activists in secret. Its agents entice our best sons and daughters into dark corners, far away from the eyes of the people, and there it murders and mutilates.

Even as we lay to rest our comrades in Cradock, we cannot forget those who were murdered in Tsakane, Duduza, and KwaThema in the East Rand heroes of the people such as Lucky Mogodi, Samuel Mashiane, and Solomon Mashobane. We cannot forget others whom the enemy has kidnapped and whose bodies have not yet been found. These are leaders and activists such as Siphon Hashe, Champion Galele, and Qaqawuli Godolozl, all of Port Elizabeth.

Over 10,000 people have been detained without charges. Almost 40 of our leaders are facing treason charges and appearing in courts in Natal and the Transvaal. And now the enemy has adopted this new tactic of kidnapping and murdering our leaders and activists, using specialised assassination squads composed of mercenaries and deranged killers.

Those who have formed and command these murder squads have cynically extended condolences to the families of those they have murdered. P. W. Botha's Deputy Minister of Foreign Affairs, Louis Nel, wept his crocodile tears on July 4th when he extended these condolences, described the murder of our leaders as tragic and barbaric, and made an empty promise that every attempt would be made to bring the killers to justice.

Louis Nel thinks we have forgotten who he is. He thinks that we are so mentally defective that his words will persuade us to see him as a friend of those he has killed. We charge Louis Nel and his

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Radio Freedom (RF) Cradock Four Speech by President Thabo Mbeki

seniors, P. W. Botha, Magnus Malan, Pik Botha, Le Grange, and others of murder. We accuse them of planned and premeditated assassination of our leaders. We say that their hands are dripping with the blood of our people. We reject their offer of assistance.

We challenge them to produce those who murdered Rick Turner, Griffiths Mxenge, Frikkie Conradie, and the students at Ongoye. We know that they will do nothing to produce those who carried out these murders. They will do nothing to produce the barbaric killers of Matthew Goniwe, Fort Calata, Sparrow Mkhonto, and Sicelo Mhlauli, because they sent these killers themselves, having sat in secret and selected who was to be kidnapped and murdered by Botha's assassination squads.

An unbridgeable canyon separates truth and the apartheid regime. Between justice and the Pretoria regime, there is no meeting point. For its supports, the racist regime relies on murder, lies, deceit, hypocrisy, and cynicism. It is that policy which will lead all of us to Cradock tomorrow. It is the same policy that led Louis Nel to don a mask of sweetness on July 4th, and to play the role of protector of the lives of those who are committed to the abolition of the criminal system that Louis Nel is committed to defend and uphold forever.

In the same vein of cynical manoeuvre and deceit, Louis Nel made bold to say that Matthew Goniwe, Fort Calata, Sparrow Mkhonto, and Sicelo Mhlauli had died because of what he described as a power struggle that is taking place between opposing radical organisations. We reject that charge. There is no power struggle among the people. The people are waging a determined struggle to wrest power from the white minority regime. The enemy of the people are those who uphold this power.

It is that enemy which has formed murder squads to kill those who lead the masses of our people in the struggle for a united, democratic, and non-racial South Africa.

There are those individuals among the Black people who have sold their souls to the demon of racism. These are no different from the enemy, but are part of it. The colour of the political cloak that these individuals wear makes no difference to the central fact that by their deeds, they have placed themselves among the ranks of the enemy. The difference between them and Louis Nel is the colour of their skin. But beneath those Black skins, there lies the same hatred for a democratic South Africa that inspires Louis Nel and Pieter Botha to plan and carry out the murder of leaders and activists of the democratic movement of our country.

Those who have lent the name of their organisation to these acts of terror against the struggling people are well-advised to cleanse themselves of the foul smell of fratricide that clings to them. If they still consider themselves as part of the forces that are fighting for the liberation of our country, then they must show by their deeds that they are not part of the enemy. They must take concrete action to ensure that their members are seen to be involved in struggle against the apartheid regime. They should not be seen hurling abuse at the democratic forces of our country; least of all should these members be seen to be attacking physically the activists of the democratic movement of our country.

Radio Freedom (RF) Cradock Four Speech by President Thabo Mbeki

Those who call themselves leaders have a responsibility to act now, to demonstrate in practice that Louis Nel was telling a lie when he said that their organisation and its members were responsible for the deaths of Matthew Goniwe, Fort Calata, Sparrow Mkhonto, and Sicelo Mhlauli. They have a duty to ensure that in Port Elizabeth and elsewhere in the country, not even one of their members acts on the side of the apartheid regime against the democratic movement. We call on these leaders to live up to their responsibilities now and as a matter of urgency. If they fail to do so, history will judge them harshly as traitors to the people's cause.

On the eve of the funeral of the people's leaders in Cradock, once more we call on all the Black people who serve the enemy by manning its structures to resign their positions. We call on them to refuse to be used as a buffer to insulate the racist white minority regime from the wrath of the people. The time has now come that those whom the enemy has armed to turn their guns against their white masters who ordered the secret executions of the heroes we shall be burying in Cradock tomorrow.

The apartheid regime has no future. Those Black people who serve this regime as soldiers, policemen and women, community councillors, and Bantustan leaders, civil servants, can no longer postpone the decision to come over to the side of the people; they can no longer postpone that decision till tomorrow.

To you, we say: come home. Abandon that which is unjust and criminal. You cannot survive if you continue to stand against the people. When your deeds catch up with you, as they surely will if you persist in serving the enemy, you will be buried as a traitor, despised by the people, and spurned even by the enemy which finds your services so useful today. If you must die, choose to be buried as a hero and not a traitor.

Compatriots, the enemy is bent on a campaign to wipe out our entire leadership, using all means, including murder. We cannot afford to lose these outstanding sons and daughters of our people. We must protect them. We must form a solid ring of steel around them to ensure that the enemy's murder squads do not reach them.

The assassination of Matthew Goniwe, Fort Calata, Sparrow Mkhonto, and Sicelo Mhlauli, others in the East Rand and the Eastern Cape, and the disappearance of yet others, is ample proof of the enemy's determination to behead our mass movement, to take away from us our most experienced activists. We must deny the enemy any success in this field. Protect and defend the leaders at both local and national levels. Put them out of reach of the murder squads. This is a task that requires our close attention and constant vigilance.

We know that the enemy has gone on this counter-offensive against our leaders because of the intensity of our struggle, because of our daring and consistent blows which have driven this enemy into a deep crisis. We are steadily marching to victory. Our struggle, therefore, requires better planning and better coordination. It requires that the most experienced and trusted activists that we have produced should be among us, occupying their place among the struggling masses of our country, helping us to move forward closer to victory. Therefore, we cannot afford to lose them as a result of lack of vigilance on our part.

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Radio Freedom (RF) Cradock Four Speech by President Thabo Mbeki

Let us protect and defend our leaders at both local and national levels. Let us put them out of reach of Pretoria's murder squads. As part of this, we must study the ways and means that the enemy uses in its campaign of murder in order to frustrate all its schemes. We must succeed to protect and defend our leaders to ensure that they continue to play their role in the struggle for a democratic South Africa.

Tomorrow at Cradock in the Eastern Cape, we shall renew our vows to fight together, side by side, until the kind of South Africa for which Matthew Goniwe and his colleagues laid down their lives is born. As we continue our fight, let them serve as our example of fearless fighters for our liberation. Let the standard of revolutionary commitment and discipline which they set serve as our guide in our forward march to victory.

The ANC lowers its banners in their memory. They did not die in vain. At their graveside, let us pledge to fight on as never before until power is in our hands. Our victory is in sight. Amandla ngawethu! Matla ke a rona!

• The End

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THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES

**SUMMONS [AS APPROVED BY THE CHAIRPERSON] TO:
APPEAR AS A WITNESS**

in terms of section 3(2) of the Commissions Act 8 of 1947, read with:

- Proclamation Notice 264 of 2025 published in Government Gazette No. 52749 on 29 May 2025;
- Proclamation Notice 278 of 2025 published in Government Gazette No. 53183 on 19 August 2025;
- Proclamation Notice 319 of 2026 published in Government Gazette No. 54818 on 8 June 2026; and the
- Rules of the Judicial Commission of Inquiry to Inquire into Allegations Regarding Efforts or Attempts having been made to stop the Investigation or Prosecution of the Truth and Reconciliation Commission Cases published in Government Gazette No. 53251 on 29 August 2025
-

Tracking reference:	0002/08/2026
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TO BOQWANA BURNS INC.

INFORM:

THABO MVUYELWA MBEKI

Of

102 RIVIERA MANSIONS

11 MAIN STREET

RIVERIA

KILLARNEY

JOHANNESBURG

2193

that he is hereby:

- **summoned to appear personally before the Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases ("the Commission") at the Sci-Bono Discovery Center, corner of Mariam Makeba and Helen Joseph Streets, Johannesburg, on 15 September 2026 for the purpose of giving evidence**



before the Commission on all matters relating to the Commission's Terms of Reference of which you have knowledge and in addition being questioned about matters arising from the relevant parts of the affidavits/statements and the transcripts of the evidence listed in Annexure "A" to this Summons;

- **inform him further** that his failure to attend and give evidence as set out above or to remain in attendance until excused by the Chairperson from further attendance or his refusal to be sworn or make affirmation as a witness, after he has been required by the Commission's Chairperson to do so, or failure to answer fully and satisfactorily any question lawfully put to him constitutes an offence under section 6(1) of the Commissions Act; and
- **inform him further** he is entitled to the same witness fees from the Commission as if he had been summoned to appear at a criminal trial held in a Superior Court in Johannesburg.

DATED at Johannesburg this 13th day of August 2026.



ADV AM THOKOA
SECRETARY:

Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop the investigation or prosecution of Truth and Reconciliation Commission cases.



ANNEXURE "A"

1. The following paragraphs of the affidavit of Mr Lukhanyo Bruce Matthews Calata ("Mr Calata") dated 17 January 2025: paragraphs 124, 125, 126, 137.2, 183, 292, 379.3, 379.4, 381.3, and 386. (A copy of these paragraphs is attached here as **Calata 1**. Mr Calata's complete affidavit is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)

2. Pages 50-54 of the transcript of the evidence tendered by Mr Calata to the Commission on 13 February 2026. (Copies of these pages are annexed hereto as "**Calata Evidence 2**". The transcript of the full evidence tendered by Mr Calata on 13 February 2026 is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)

3. Pages 56-59 and pages 75-76 of the transcript of the evidence tendered by Mr. Calata to the Commission on 16 February 2026. (Copies of those pages are annexed hereto as "**Calata Evidence 3**". The transcript of the full evidence tendered by Mr. Calata on 16 February 2026 is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)



4. Pages 10-11 and pages 22-24 of the transcript of the evidence tendered by Advocate Anton Ackermann to the Commission on 4 March 2026. (Copies of these pages are annexed hereto as **"Ackermann Evidence 1"**. The transcript of the full evidence tendered by Ackermann on 4 March 2026 is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)
5. A sworn statement made by Advocate Dumisa Buhle Ntsebeza SC on 14 November 2025 which was submitted to the Commission as "Supplementary Statement of Dumisa Buhle Ntsebeza". A copy of this statement (together with the two annexures thereto) is annexed hereto as **"Ntsebeza Statement 1"**.
6. Pages 26-34 of the transcript of the evidence tendered by Advocate Ntsebeza to the Commission on 30 April 2026. (Copies of those pages are annexed hereto as **"Ntsebeza Evidence 2"**. The transcript of the full evidence tendered by Advocate Ntsebeza on 30 April 2026 is available at the Commission's Offices at Sci-Bono Discovery Centre, Third Floor, Cnr Miriam Makeba and Helen Joseph Streets and on the Commission's website at www.trc-inquiry.org.za)

Opening the door to political interference

124 On 12 March 2003, the TRC Report's final volume (vol 6) was released. On 15 April 2003, President Mbeki made a statement to the National Houses of Parliament and the Nation on the Occasion of the Tabling of the Report of the TRC a copy of which is annexed hereto marked **FA21**. In relation to criminal accountability and the TRC's follow-up process President Mbeki stated:

"Besides the imperatives of managing the transition, an important consideration that had to be addressed when the TRC was set up, was the extent to which the new democratic state could pursue legal cases against perpetrators of human rights violations, given the resources that would have to be allocated to this, the complexities of establishing the facts beyond reasonable doubt, the time it would take to deal with all the cases, as well as the bitterness and instability that such a process would wreak on society.

The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty – in instances where perpetrators had provided the true facts about particular incidents – and restorative justice which would be effected in the form of reparations. Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter?

Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past, but also in the creation of a new ethos within our society.

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.

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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.

This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts. ...

This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts.

Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action.

Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard."

125 According to Adv Pikoli, who was the NDPP between February 2005 and September 2007, what followed Mbeki's speech in relation to the TRC cases "*was anything but the 'normal legal processes.'*" A copy of Pikoli's affidavit that was filed in *Nkadimeng 2 (TN7)* at pp 170 – 216) is annexed hereto marked FA22.

126 It appears that the seeds of the political interference were laid in the deliberations that led to the strategies that are reflected in Mbeki's speech.

126 1 While Mbeki appeared to disavow another amnesty because of its constitutional implications, he nonetheless made it clear that certain arrangements would have to be made to accommodate the many perpetrators who did not take part in the TRC process.

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126.2 He indicated that while the NPA would be permitted to continue with its normal work, it would nonetheless be required to work with "*our intelligence agencies*" to enable those who still wish to speak the truth "*to enter into arrangements that are standard in the normal execution of justice*".

126.3 Mbeki stressed that individuals who still wished to seek justice or take up any human rights violation grievance could approach the courts. He noted the relevant departments were examining the modalities as well as whether any fresh legislation was needed.

127 Mbeki signalled that in relation to the TRC cases it was not going to be business as usual. Unlike other cases involving serious crimes such as murder, the TRC cases were going to be treated differently. Perpetrators in these cases would be offered some form of leniency or alternatives to criminal prosecution. Family members could play a role in these "*legal arrangements*" and if still aggrieved could approach the courts, presumably to pursue private prosecutions or some form of civil litigation against the perpetrators.

128 Mbeki was articulating government policy that effectively said that the pursuit of justice in the TRC cases was not to be prioritised and that special arrangements were going to be put into place. His reference to the involvement of the "*intelligence agencies*" was a portend of what was to follow, in which such agencies came to impose their will on prosecutorial decisions.

Closing down of the TRC Cases

129 Following Mbeki's speech, those wielding power and influence wasted little time in closing down the TRC Cases. Within a few weeks of the speech, attempts by PCLU

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the aforesaid report. Ledwaba was firm in his refusal to take on the TRC cases. In his affidavit, Macadam noted the following about that meeting:

"The meeting was unpleasant as Ledwaba made it clear in no uncertain terms that the DSO would not investigate any TRC matters and that these should all be referred to SAPS." (emphasis added)

135 A copy of a letter addressed by Ledwaba to Leask dated 15 July 2003 reflecting this decision is annexed to Macadam's affidavit (FA5) as annex RCM3 (at p814). In this letter he instructed Leask as follows:

"TRC cases
I have decided that SAPS must take over the investigations of all such cases currently handled by you. Your files should be closed off and all the material given to the PCLU. It must also be given the storeroom currently being used. Notwithstanding the above decision Adv Tongwane must finalize the Black Cats and Winnie Mandela cases. Due to the fact that NDPP has requested a speedy finalization of the two matters this must be done before 30 July 2003. I have also transferred the two researchers to the PCLU. It may be necessary for your investigators to introduce certain witnesses with whom they have dealt to the SAPS investigators, and you are accordingly authorized to conduct the necessary handovers."

136 This refusal of the DSO to investigate the TRC cases was a remarkable decision, given that the DSO had previously been seized with the TRC cases and just weeks earlier the NDPP had declared the TRC cases to be "priority crimes"

The President must decide

137 It is reflected in Macadam's affidavit that he and Ackermann then met with Commissioner Johannes De Beer, the Divisional Head of the Detective Service of the SAPS (De Beer) and requested the SAPS to take over the investigations.

137.1 On 26 September 2003, De Beer replied to Ackermann informing him that the request had been discussed with the National Commissioner of the

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SAPS, Jacob "Jackie" Sello Selebi (Selebi). In his letter De Beer advised that the SAPS would not provide investigators for the TRC cases.

137.2 He indicated that the investigation of the TRC matters was a DSO responsibility and the NDPP would need to approach the President for a decision as to which agency should conduct the investigations. A copy of this letter is attached to Macadam's affidavit (FA5) as annex RCM4 (at p816).

137.3 According to Macadam, NDPP Bulelani Ngcuka never approached the President.

138 De Beer explained as follows in his letter:

"I have discussed your request for the assistance of the South African Police Service, to investigate cases emanating from the TRC processes, with the National Commissioner. It is evident from your letter that the investigation and prosecution of these cases were referred to the National Director of Public Prosecutions, by the President. **Our understanding was that this referral was politically inspired.** As you know, a large number of cases to be investigated are those of ex-policemen. It is therefore understandable that you first endeavoured to have these cases investigated by the Directorate for Special Operations (DSO).

From your letter it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC, and secondly, why it was not possible to obtain a Presidential Proclamation to provide such mandate if it was lacking. Your letter only states that: "In March 2002, consideration was given to the issue of a Presidential proclamation, but problems were encountered in this regard. You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with the DSO.

In view of the nature of the investigations, the fact that the President has referred it to the National Director, and that it seem to be common cause that the initial understanding was that the DSO would have investigated it, the opinion is held that you, or the National Director should approach the President, and confirm the instruction of the President on who he wants to investigate these cases.

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and that he would be told that the case against his clients must be placed on hold.

182.3 Shortly thereafter Ackermann received a phone call from an official in the then Ministry of Justice. He was informed by the said official that a decision had been taken that the Chikane matter should be placed on hold pending the development of guidelines to deal with the TRC cases. Ackermann refused to follow this order and told the official that only the NDPP could give him such an instruction. The official told him that he would shortly receive a phone call from Adv Ramaite, the Acting NDPP.

182.4 A few minutes later Ramaite called Ackermann and instructed him not to proceed with the arrests. Ramaite also ordered Ackermann to immediately halt work on all TRC cases. Ackermann indicated in his affidavit that it could be safely assumed that the Acting NDPP was instructed at a political level to suspend these cases.

183 According to an interview conducted by the author Ole Bubenzer with Wagener in Pretoria on 8 May 2006 (reflected at page 130 of Bubenzer's book), when Wagener was advised that the arrests were going to be effected, he immediately intervened politically and put great pressure on the government to stop the proceedings. Wagener claimed that authorisation to suspend the arrests came from President Mbeki *"in an extraordinarily swift move"*.

184 Macadam in his affidavit (FA5) confirmed that Ackermann advised him that a moratorium on the investigation and prosecution of the TRC cases had been put in place.

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"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.'"

290 Mbeki assured members of Parliament that the new process would be consistent with "*what the nation sought to achieve through the TRC,*" and would support the discharge of the President's "*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.*" The use of the pardon power to accommodate perpetrators who had spurned the TRC amnesty process was in line with the recommendations of the ATT that were made in 2004.

291 Mbeki asked each political party represented in Parliament to appoint a representative, not necessarily an MP, to serve on a Pardons Reference Group (RG) charged with considering pardon requests and submitting recommendations to the President. Mbeki pledged that his pardoning decisions would be guided by the values and principles enshrined in the Constitution, as well as the "*principles, criteria, and spirit*" of the TRC.

292 Mbeki announced a window of opportunity for new pardon requests that would open on 15 January 2008 and close on 15 April 2008. Requests would be considered from applicants convicted of offences "*of the nature considered by the TRC during the period up to 16 June 1999.*" A copy of Mbeki's address to Parliament is annexed marked FA42.

293 On 16 January 2008, the Presidency released a press statement announcing the beginning of the period of applications for political pardons. A copy of this press

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378 Bubenzer in his book in a chapter titled "*Bargaining Over the TRC's Legacy*" detailed secret consultations between the ANC government and representatives of the SADF and the security police from 1998 until early 2004. The main aim appeared to be to reach agreement on a legislative solution on how to avoid prosecutions in the wake of the TRC. A copy of the relevant extracts from Bubenzer's book are annexed hereto marked **FA58**.

379 According to an interview conducted by Bubenzer with former police commissioner and head of the Foundation for Equality Before the Law (**FEL**), Johann van der Merwe, in Pretoria on 5 May 2006, former President F.W. de Klerk assumed a central role in the consultations. According to Bubenzer:

379.1 De Klerk often consulted with President Mbeki directly or with other high-ranking members of the government.

379.2 The FEL's aim was to find a solution to avoid the prosecution of former members of the SAP who had not received amnesty.

379.3 Since a general amnesty was not politically or constitutionally feasible, the FEL proposed an indemnity procedure based on admission of the crime committed, but without the need to make full disclosure.

379.4 The talks continued until 2004, without an agreement being reached.

380 However, the approach proposed by FEL in relation to the '*admission of crimes but no full disclosure*' was adopted by the Pardons Reference Group established by President Mbeki under the Special Dispensation for Political Pardons in 2007.

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381 According to an interview conducted by Bubenzer with former SADF General Jan Geldenhuys (Geldenhuys) in Pretoria on 10 May 2006, consultations between government and a group of high-ranking former generals of the SADF commenced during 1998.

381.1 Former Chief of the SADF, General Constand Viljoen was approached by Jacob Zuma, then Deputy President of the ANC with the aim of discussing questions of criminal accountability arising from the past. Viljoen referred Zuma to Geldenhuys and the Contact Bureau (known in Afrikaans as the Kontak Buro).

381.2 As with the police negotiations, these talks were aimed at finding a mutual arrangement to avoid post TRC trials through a new indemnity mechanism. The government was represented by Jacob Zuma, who became Deputy President of South Africa in June 1999 (Zuma).

381.3 The talks were mediated and facilitated by Johannesburg businessman Jürgen Kögl, who was closely connected to leading ANC members. Apart from Zuma, other high-ranking members of the ANC, such as Penuell Maduna (then Justice Minister), Mathews Phosa, Sidney Mufamadi and Charles Nqakula also participated from time to time. On various occasions Thabo Mbeki was also present, initially in his capacity as Deputy President, and later as President.

381 4 The SADF was represented by Geldenhuys and other generals. Both sides had legal advisers present. The talks continued until early 2003, with a few follow-up meetings held in 2004.

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There was enthusiastic agreement that the commenced communication should be continued and that more meetings should follow. We, the former Chiefs of the SADF, being aware of the Deputy President's tight work schedule, suggested that he appoint one of his ministers to represent the ANC in future deliberations. Mr Mbeki, however expressed the opinion that the process of communication, which was mutually agreed to, was so important to him that he preferred to remain the prime representative of the ANC in future deliberations.

Many deliberations followed and mutual agreements were reached. When Mr Mbeki could not attend, he authorised somebody, usually a minister, and later on when he became president in 1999, you [Deputy President Jacob Zuma] represented him.

In execution of mutual decisions, much effort was put in by the Contact Bureau and some of your ministers to prepare papers and submissions for acceptance by the Deputy President and later on the President.

In similar fashion, we the former Chiefs of the SADF as members of the forum were flown to Cape Town for discussions with Ministers Maduna and Ngakula and thereafter with you on 17 February 2003."

387 Former Premier of Mpumalanga, Mr Mathews Phosa, in a telephonic call to Schmidt on 2 June 2020, denied the claim of Marais that he had been involved in an ANC lobby pursuing protection from prosecution.

388 Bubenzer writes that Geldenhuys and Kögl advised him that by the end of 2002, the consulting parties had agreed on a detailed proposal for the enactment of a legal mechanism which amounted to a new amnesty. It envisaged an amendment to the Criminal Procedure Act to allow for a new kind of special plea based on the TRC's amnesty criteria, followed by an inquiry by the presiding judge.

389 By late 2002 the proposal and draft legislation had been finalised by the Justice Department and was ready to be presented to Parliament for enactment. However, it first had to be approved by President Mbeki, who ultimately rejected it in early 2003. Nonetheless, as has been set out above, the essential ideas re-emerged in the subsequent amendments to the Prosecution Policy.

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Dullah Omar. According to Schmidt, when Mbeki became President, Zuma's "security cluster" team would most likely have included Minister of Defence Mosiuoa Lekota, Minister of Justice Penuell Maduna (replaced by Brigitte Mabandla in Mbeki's second Cabinet), Minister of Intelligence Joe Nhlanhla (replaced by Ronnie Kasrils), and Minister of Safety and Security Steve Tshwete (replaced by Charles Nqakula).

385 On 5 May 2020, former Minister of Intelligence Kasrils emailed Schmidt regarding the ANC-SADF talks advising that he had 'no knowledge of virtually all the meetings and developments arising from such talks.' Schmidt no longer has a copy of this email.

386 Schmidt notes in his book, that during the interview, Marais showed him an unsigned handwritten letter he prepared for the signature of the former Chiefs of the SADF in early 2004. Marais permitted Schmidt to take photographs of the letter. The letter was addressed to Deputy President Zuma, and it recalled the initiation of the series of secret, high-level talks between the government and former SADF Generals, a copy of which is annexed hereto marked **FA61**. The letter stated *inter alia*:

"A process of communicating between the ANC initially and the government lately with the former chiefs of the SA Defence Force was initiated by the Deputy President of South Africa Mr T. Mbeki when he approached General C.L. Viljoen in 1997 (sic). General Viljoen after consultation with the former Chiefs of the Defence Force within the structure of the SADF Contact Bureau conveyed our preparedness to communicate with Mr Mbeki in his capacity as Deputy President and President of the NEC of the ANC.

A convenor, Mr J. Kögl, apparently empowered by Mr Mbeki, arranged for a meeting at his house in Johannesburg. That meeting was in the form of discussions followed by a dinner hosted by Mr Kögl. It was attended by Mr Mbeki and various of his ministers as well as the Premier of Mpumalanga Mr M. Phosa, [leader of an ANC lobby arguing that its members be protected from prosecution], and by us the former Chiefs of the SADF.

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"Calata Evidence 2"

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they went into that family, the cops they arrested the father, the mother and the older brother. They left, I think a 9 year old girl to fend for her twin siblings who were about 6 years old.

Those are our stories. I am not fabricating anything that I have said to you here, Commissioners, none of it is a fabrication. We have done everything that we could as families to help advance the struggle against apartheid and particularly for the African National Congress, because that is where my family has got a very strong history.

10 We understood to some degree that the apartheid government would not kill my father, prosecute themselves and then convict themselves for the murders that they did. We understood that. We understood.

But what we expected was in 94 when the African National Congress took over the governing party in this republic, that they would do the right thing by us, that they would prosecute the Craddock Four's killers.

20 Judge Neville Zietsman delivered his judgment in the second inquest on 28 May. Madiba was sworn into office on 10 May 94. One of the very first judgments of the democratic South Africa was handed down by Judge Neville Zietsman where he found that the Craddock Four were killed by members of the apartheid government or security branch.

So we expected that there would be justice. But nothing ever came. My father and his comrades, they were betrayed by the

state, because no state should ever be involved in the murder of its own citizens, that should never, ever be the case.

The state cannot become terrorists, never, not with the might and with the resources that the state has. It should never. But in the case of the Craddock Four and many other families, the state became the terrorist. So my father was betrayed by his own state, the apartheid state and then the ANC then comes into power and then the ANC then betrays them again. So two times.

And it is not just my father and his comrades, but it is all of
10 the families, some of whom that I am sitting here representing directly on their mandate and some families who I do not even know, that this commission does not even know, but indirectly I am representing those families here today too.

The ANC and the government and the various administrations that it has led for 31 years now, has failed us in ways that we cannot even begin to articulate. It is the worst form of betrayal. We did not expect that from the apartheid government, we really did not expect better.

If someone is prepared to kill someone, if someone is
20 prepared to commit crimes against a people's humanity, we cannot expect much from those people, that is just what they are. They showed us the worst of what humanity actually is and it is okay. But we expected a lot better, a lot, a lot, a lot better from the ANC.

So they have betrayed us, Commissioners. I am a broadcaster, I talk a lot, but I am at a loss for words to explain the

degree to which the ANC and its governments has failed us. They have betrayed us, those people.

ADV VARNEY: Mr Calata, can I also ask you for your brief reaction to the fact that the government of South Africa and the President in particular announced shortly after the filing of your papers in January last year, that he did not wish to fight with the families. He also wanted to see closure and he wished to mediate and yet just weeks later he seeks to reinstate his opposition and fight with the families and even launches a stay application against your case.

- 10 MR CALATA: Commissioners, I despise politicians, I really do. I think they are like the scum of the earth, really like generally. I have got no issues against political activists because my father was a political activist, but politicians they say one thing and they do a complete other.

Because for them it is about form, it is about preying up to the public, it is about time in office close to resources and all of those things. We have heard in this commission here where former President Jacob Zuma as well, where he has mentioned to you directly, Commissioners, said that no, you know they understand the
20 plight of the victim's families and all of those kind of things, but yet they fight tooth and nail to stop the proceedings of this commission.

President Cyril Ramaphosa publicly says oh no, we understand the plight of the families and we do not want to be seen, because politically it is inconvenient for them to be seen to be fighting with us. So they say that in public but behind the scenes and behind

closed doors they do almost everything possible to prevent us from like securing justice.

And they do that all the time. Politicians will laugh in your face and they will pretend and I used to work as a politics journalist, I was once the politics editor of another television news channel. They laugh in your face and they will pretend that they are your friend, meanwhile the things that they do are utterly despicable.

The fact that we are sitting here, we have this commission, it is disgraceful. It is disgraceful and the ANC is responsible for that and I am hoping that this commission will use the opportunity and the powers that this commission have to subpoena former President Thabo Mbeki. He must come here and he must come and answer for his failings.

Former President Jacob Zuma, he must come here, he must come and answer for his failings. They must come here. And you as the commissioners must ask them questions, because the TRC handed over its reports, it handed those reports over to former President Thabo Mbeki, not to anyone else. It handed it over to him.

Him as the President of this republic, what did he do about it? What did his organisation do about it? What did his government do about it? If nothing was happening with regards to these cases, why did he not as the leader, as the President of the republic call his ministers of justice, his national directors of public prosecutions, his police commissioners.

Why did he not call them into a room and say gentlemen or

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ladies, I need this to be done pronto? He did not do so, that is why we are sitting here all of these many years later asking these questions.

ADV VARNEY: Thank you, Mr Calata. Commissioners, we are about to turn to the topic of the interference itself, but Commissioners I am concerned about the conditions in this auditorium, the fumes have not gone away, it still thicken the air, I am wondering whether we are endangering ourselves by persisting with the hearing at this time.

10 And I have not consulted with anybody else, but it does not seem to me to be optimal conditions in which to hold this hearing at the present time. And I am suggesting Commissioners, that we adjourn until Monday and that perhaps between now and Monday technicians can come and make sure that this auditorium is free of fumes, because I do think it is now becoming a health hazard.

CHAIRPERSON: Yes. Mr Nel?

ADV NEL: May it please the commission, we feel exactly the same in terms of the conditions in this venue and we support Mr Varney and thank him for bringing ...[indistinct]

COMMISSIONER: Just repeat that on record, please Mr Nel.

20 ADV NEL: I hope I can do that. May I just say that we support the application of Mr Varney and we thank him for bringing this application because we also feel that it is difficult to sit in this venue under these conditions and we would certainly prefer to be able to listen and follow the proceedings without being worried about the conditions in this venue.

"Calata Evidence 3"

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have placed before this Court in your affidavit. Now, I want to refer you to a statement by former President Thabo Mbeki that is reflected at page 155 of your statement. This is a statement released by the Thabo Mbeki Foundation, dated 1 March 2024. Commissioners, it can be found at page 736 of Bundle 1. The statement is titled, "Statement by former President Thabo Mbeki on allegations of NPA interference by the executive." Now in this statement former President Mbeki vehemently denies that he or his administration ever interfered with the work of the NPA in relation to the TRC cases and

10 he ends off his statement with this quote, which I will put to you. It is at paragraph 404 on page 156. I will just read the last paragraph of the statement.

"The NPA must demonstrate enough integrity by apologising for not processing the TRC cases rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication."

So essentially, it appears that Thabo Mbeki seems to be saying that, well the explanation for the TRC cases going forward that cannot be

20 attributed to anything he or his administration did but it is rather the fault of the NPA for not doing its work and processing those cases. They are the ones that must take responsibility and should not be making any other such claims. What is your response to that statement by President Mbeki?

MR CALATA: Who received the seven-volume report of the Truth

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and Reconciliation Commission in 2003 was former President Thabo Mbeki. He was the President of the Republic at the time. Those reports were handed to him. They were handed to him. So the buck around everything that related to the Truth and Reconciliation Commission, the implementation of the recommendations started and ended with him. If his Minister of Justice did not ensure that the recommendations of the Truth and Reconciliation Commission were implemented, who must be held accountable for that? His Minister of Justice or him? If the Directorate for Special Operations or

10 Investigations does not do what they were supposed to with documents with a report that was handed to the President who must be held accountable? The NDPP? What about the President who was the one that received the reports? Because when you are president you cannot decide, what you want to do and what you do not want to do. The fact that we are sitting here today, Commissioners, is because of Thabo Mbeki's failings. It is because he failed as the President of the Republic to ensure that two of his administrations, the one that he led when he received the TRC reports in 2003, then we went to the elections in 2004. I remember

20 intricately actually, when Mr Mbeki was inaugurated into office in 2004 there was a Malian artist that came and performed at his inauguration. His name was Ali Farka Touré. He performed at Mr Mbeki's inauguration. I was working there that day. I mean, I will not go on about how impressed I was with his music, but I remember Thabo Mbeki's inauguration in 2004. And then he led his second

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administration from 2004 to 2008. So two administrations where Thabo Mbeki failed to do anything about the TRC matters. Now he issues a statement and he says the NPA must demonstrate enough integrity by apologising for not processing the TRC cases rather than engage in dishonourable behaviour of trying to hide behind a fig leaf which is nothing more than pure fabrication. Here, former President Thabo Mbeki insults our intelligence. He says the NPA must demonstrate enough integrity. What about integrity on his half? How about him apologising to us for the failures of his administrations to process TRC cases? He says the NPA is engaging in dishonourable behaviour. I suppose his behaviour was quite honourable. Yet here I sit without justice for my father and all of the other families that I am here speaking on behalf of. He was in office and he says we are trying to hide behind a fig leaf which is nothing more than pure fabrication. Fabrication from whom? Fabrication from me? Am I fabricating the fact that I am sitting here without justice for my father? Am I fabricating the fact that I am struggling to raise my son? Am I fabricating that? Mbeki must not disrespect us anymore. It is enough now.

20 ADV VARNEY: Mr Calata, before we close up your evidence-in-chief. Is there anything further you wish to add? Any expectations that you may have in respect of this Commission?

MR CALATA: Commissioners, I wish to appeal to you, not just on behalf of my direct family and the families of the Cradock Four, but on behalf of all of the other families that I represent directly as I sit here

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that this inquiry is perhaps the last hope for us. I wish to appeal to you to help us and help us like for real help us. Not the lip service that we have received from politicians over the years but help us. We will perhaps, well not perhaps, but we will not see justice in the truest essence of what justice is for my father's life. But help us at least to gain knowledge and understanding and to understand who the people were that denied us that justice for my father. Because maybe we can then use that information and we can say... [speaking in vernacular], we close it here, because the Khampepe Commission

10 has given us the answers that we needed. So today, we can now close this matter. But for this thing to just remain year after year after year, where we are fighting for recognition, where we are fighting for validation, where we are fighting for our dignity, because that is really why we are here. Because politicians or some politicians and the decisions that they have taken have perpetuated the stripping of our dignity. That is what has happened here. And I would like to appeal to this Commission to help us close what has been a very very difficult chapter in our lives. When my father was killed, my mother was 26. In two months, my mother will turn 67. For 41 years, we

20 have been with this thing. I was three when my father was killed. As I sit and talk to you, I am 44 years old. We have been doing this thing. So Commissioners, I really, I plead with you to help us close this matter once and for all. I would hate for Dorothy's children or for Kwesi or for my younger sister's kids for them to have to continue with this thing. Please help us close it with us at this generation. So that

"Calata Evidence 3"

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minutes. Now how do you disperse a crowd of over 2 000 people in five minutes and these young men and women were inside a church and the police fired rubber bullets and tear gas directly into a church. The church was built by my great grandfather but that is another story. But the police fired bullets into a church, rubber bullets and tear gas. There was no respect for our humanity, for how do you fire rubber bullets and tear gas into a church because that is people will do almost whatever it is to try to get out of that environment and get to safety. So there was a stampede. Young men, women, my sister's
 10 age at the time, or maybe older than her, slightly older than her, but there was a stampede and people got hurt.

COMMISSIONER KGOMO: Your sister Dorothy now?

MR CALATA: Yes, my sister Dorothy. So my father he did not go into exile. So he maybe was not considered to be, you know, part of the crowd that went to Sussex or Essex or whatever and you know, my father chose to be that rice kernel that stayed in the pot and dealt with the heat of whatever it was. That is what my father did. He chose, he chose to stay in the pot. So the fact that we have not been heard or recognised and that our integrity is not being considered, is
 20 not because we are not worth it. We are. And the fact that some people, Thabo Mbeki among them, chooses to disrespect us that is on him. He chooses to disrespect this Commission by not abiding by regulations or statements or requests that have been made to him. That is on him and Zuma. It is on them. Because we know what our fathers did and we will fight to have the respect that our fathers

deserve. Because my father, he laid down his life for this country. My father there is not a single moment where my father was ever accused of having stolen people's money or abused his office or any of those things. That is what my father did. And if Zuma or Mbeki, if they choose not to respect my father, that is on them. That is on them. But if they can take the position as to not to respect us, not to respect this Commission, not to respect what we are trying to do here, then there is no obligation on us to respect them.

ADV SEMENYA: Yes, and the inquests and what they yielded, I do
10 not think state actors can take much credit about that. My understanding is, these happened at the instance of the victims making the requests.

MR CALATA: That is correct. That is why we have had to file an application to compel the NPA to make a prosecutorial decision.

ADV SEMENYA: And two outcomes of some of those inquests illustrate the point that there was lack of investigation.

MR CALATA: Correct.

ADV SEMENYA: Even the judgments that you refer to also confirm something of interference. Correct?

20 MR CALATA: Yes, sir.

ADV SEMENYA: It becomes inescapable that if you join all the dots they would not disclose interference by state actors.

MR CALATA: Correct.

ADV SEMENYA: And that is what you seek to find amongst other things.

"Ackerman Evidence 1"

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A R ACKERMANN

President Mbeki's speeches and associate myself with "I am an African" speech he made in 1994. However, my high regard and respect for him has been dented due to his actions relating to this TRC Commission.

In the aftermath of the TRC reports of 1998, President Mbeki was faced with the so-called unfinished business. At the time a number of meetings occurred between the leaders of the ANC and generals of the police and the security forces. They were all in search for a political solution to prevent prosecutions of the security forces.

10

ADV VARNEY: If you can just pause for a moment, Mr Ackermann. How did you know that there were meetings taking place between leaders of the ANC and senior members of the erstwhile security forces?

ADV ACKERMANN: Commissioner, I will deal with that when; there is a heading that I have interaction with Jan Wagenaar. That is how I know about it and I will give evidence extensively on what Wagenaar told me.

ADV VARNEY: And just for the record, Commissioners; Mr Jan Wagenaar was the attorney for several of the former members of the security forces, including some of these generals allegedly involved in meetings, but please proceed.

20

CHAIRPERSON: In response to your question then, Mr Varney; it is Adv Ackermann's evidence that he knows about these meetings because of the interactions he had with Mr Jan Wagenaar.

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ADV VARNEY: Yes, exactly and later in his evidence he will go into that in more detail.

CHAIRPERSON: Yes.

ADV ACKERMANN: Commissioners, then regarding President Mbeki, I am of the view that he is a very, very competent politician [indistinct] politician. President Mbeki knew that general amnesty was out of the question. He could not set up another amnesty process. It would have been unconstitutional. The solution to the unfinished business is skilfully retracted in the speech in parliament
10 on 15 April 2003.

The speech, Commissioner is a classical Machiavellian and it is obvious that he has read the prints, a textbook he recommended at political leaders; and the principle I am going to refer to is the principle 'the end justify the means'. That is a very important principle of Machiavelli. The end that President Mbeki was so desperately seeking was some accommodation of many of those who did not take part in the TRC process. The means that he used to achieve this end was unconstitutional. It was also morally questionable. This was the process embarked by the amnesty task
20 team, the draft amnesty bill and ultimately the amendments to the prosecuting, the TRC Prosecuting Policy which became effective on 1 December 2005. That amounted to a re-run of the amnesty process.

When we analyse the first half of his speech, you realise how masterfully he has sheered the South African public; that, first, he said there should be no general amnesty. He says prosecutions will

other matters too. So there were some prosecutions. The third time frame is the period October 2007 to 2017, a period of 10 years. That is when I left and Mr Pikoli left. Now during this period there were no TRC prosecutions which I know about; 10 years.

Now the fourth period is of course 2017 to date. As I stated there, I read in the newspapers or somewhere that there was a TRC unit consisting of 40 investigators, how many prosecutors. I do not know if it still is, but I do not see that many prosecutions, but I know they did conduct some cases.

10 ADV VARNEY: Thanks, Mr Ackermann. Can we now turn to what you referred to earlier, your interaction with the attorney Jan Wagenaar who was representing some of the former members of the South African Police Force; in particular, the Security Branch.

ADV ACKERMANN: Yes. I have known Wagenaar for approximately 40 years. My interaction with him was mostly as an adversary in criminal court cases involving members of the South African Police Force. And as such, he was also the legal representative of General van der Merwe and Vlok and FEL, Foundation for Equality before the Law or something to that effect. I

20 call them FEL ...[intervenes]

ADV VARNEY: And when you refer to Vlok, are you referring to the former Minister of Law and Order, Adriaan Vlok?

ADV ACKERMANN: That is correct, that is correct. My relationship with him, as I said, it was always cordial. He was a reserved person who played his cards close to his chest. We of course had

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differences inside the court and outside of the court, but in all my dealings with him I always found him to be an honest person. Before my appointment as the special director in 2023, I investigated and prosecute members of the police force for murders of atrocities committed and ...[intervenes]

ADV VARNEY: Just a small point; when you say 2023, you mean 2003?

ADV ACKERMANN: 2003, sorry. Wagenaar got wind of the fact that I was drafting an indictment against General Krappies Engelbrecht
10 and all the perpetrators of the PEBCO 3 matter. He made an appointment to come and see me and discuss the prosecution of these police members. It was a very long meeting, but the bottom line of this meeting was that he told me that I am wasting my time and that any attempt to prosecute TRC cases will be futile and a waste of time and money.

He told me about meetings between the South African Defence Force, the Police Force, with ANC leaders. He told me about President de Klerk and President Mbeki took part in these meetings and that they all agreed that there should be a political
20 solution to avoid any prosecutions. He told me about the new amnesty law that will be promulgated and that the law will make provision for a special plea.

And if I am not mistaken, he even showed me some document that it was in the offering, this... it was; I did not even take cognisance of it, but basically he told me what I then read last year in

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the Calata docket, affidavit where it makes reference to extracts of the Bubenzer's book ...[intervenes]

ADV VARNEY: Did he show you a copy of the draft Indemnity Bill?

ADV ACKERMANN: I do not recall at this stage, but I know at some stage he told me there was already a bill; and that was now before. That must have been the end of 2002, because I was still... but I am not sure about what the date is. He told me all these things; and Commissioner, by nature I am a very cynical person and what he told me, he showed me whatever, I took with a pinch of salt, because
10 there was no doubt in my mind that the re-run of the TRC prosecutions will be unconstitutional. At some stage during ...[intervenes]

ADV VARNEY: Mr Ackermann, when you say TRC prosecutions, do you mean a re-run of the TRC amnesty process?

ADV ACKERMANN: Process to grant amnesty. At some stage during my interaction with Wagenaar between, I would say 2003 and 2005, he informed me that I must tell my bosses that if any member of the former Security Police Force are prosecuted, this Foundation for Equality before the Law will institute a private prosecution against
20 them. And I paraphrase when I say 'my bosses'.

I asked Wagenaar to; these bosses that you are referring to, who are they? And then he mentioned the ANC 37. Of course I took umbrage and he saw it and he immediately apologised. I further informed him that FEL cannot institute a private prosecution without the authorisation from the NDPP. Of course we must issue a *nolle*

"Ntsebenza Statement 1"

11

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

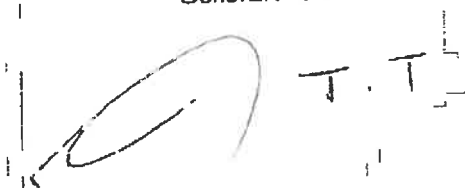
SUPPLEMENTARY STATEMENT OF DUMISA BUHLE NTSEBEZA

I, the undersigned,

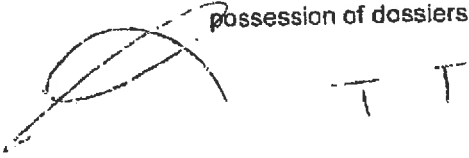
DUMISA BUHLE NTSEBEZA,

do hereby make oath and state:

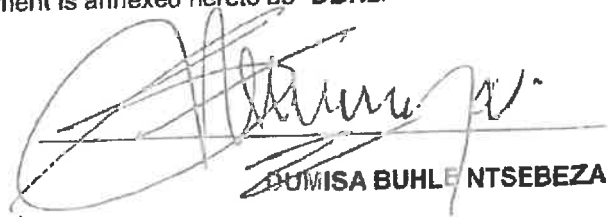
1. I am a former Commissioner of the Truth and Reconciliation Commission (the "TRC"). I am a Senior Counsel practicing as such at the Sandton Chapter of the Pan African Bar Association of South Africa (PABASA) Group of Advocates, situated at 1st Floor, PABASA Sandton Chambers, 82 Maude Street, Sandton, Johannesburg. I am currently a judge on the African Court on Human and Peoples' Rights.
2. 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.
3. I depose to this supplementary statement 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.
4. While I was a commissioner of the TRC, I oversaw the TRC's investigation unit. As part of my responsibilities, I interviewed and engaged with various persons in respect to the conflicts of the past.
5. I wish to bring to the attention of the Commission a recent recollection I had regarding an interaction I had during or about 1996 or 1997 with former senior officers of the former South African Defence Force ("SADF"), including Major General Pieter Hendrik "Tienie" Groenewald ("Groenewald").



6. Groenewald was a Major-General in the SADF and was head of Military Intelligence (MI) in the mid-1980s under President P W Botha.
7. Groenewald had been involved in clandestine operations to assist the UNITA and RENAMO rebels in Angola and Mozambique; and in South Africa in the mid-1980s he spearheaded secret SADF support, including "offensive paramilitary" support for Mangosuthu Buthelezi's Inkatha movement for purposes of promoting division and violent instability among black people.
8. Groenewald was also a key figure in the early 1990s "Committee of Generals" that opposed the political transition and supported the creation of an independent Afrikaner state. The "Committee of Generals" was formed around 1993, following the assassination of Chris Hani, with the goal of uniting right-wing groups. Other prominent members included General Constand Viljoen, Lieutenant General Koos Bischoff, Lieutenant General Cobus Visser and Lothar Neethling, ex-deputy commissioner of police.
9. Groenewald died on 2 November 2015.
10. Around 1996 or 1997 I was asked to attend a meeting with Groenewald and other former senior SADF officers at the Johannesburg Sun and Towers Hotel. I was accompanied by Lwandle Wilson Magadla, the head of the TRC's Special Investigative Unit ("Magadla"). Magadla died in August 2011.
11. I believe that this meeting has significant relevance for this Commission. At this meeting, Groenewald and his colleagues, urged me to cease investigations against the former apartheid security forces, since they had an agreement in place with the ANC that apartheid-era crimes would not be pursued.
12. Around this time the TRC had recovered a large number of SADF and MI documents under a search and seizure warrant.
13. I recall that Groenewald expressed shock at how rigorously the TRC was pursuing its mandate, given that there had been an agreement between the ANC, the National Party and high-ranking officials of the SADF not to investigate those involved in past conflicts. He also said that they were in possession of dossiers which seriously compromised senior ANC officials.

A handwritten signature, possibly 'T T', is written in the bottom left corner of the page.

14. I informed Groenewald that in respect of my investigations at the TRC, I take instructions only from the Chair of the TRC, Archbishop Tutu, and no one else. I recall that at some point after the meeting, Magadla and I reported to Tutu and Alex Boraine, the Deputy Chair of the TRC. They advised us that we had adopted the right approach in our encounter with the generals. Nobody else was present in that meeting. Boraine died in 2018, and Tutu died in 2021.
15. At the time, I do not recall making a written recordal of this engagement or the contents thereof. I do, however, recall speaking on the issue with a Cape Town based radio station, although I have not been able to find a recording of this interview. Some years later in 2015, when I was interviewed by Stephen Grootes on Cape Talk/ 702 I made reference to this encounter. A transcribed copy of the relevant portion of this interview is annexed hereto marked "DBN1".
16. The remarks by Groenewald accords with what has since been alleged about an informal agreement not to pursue the TRC cases. In particular, it accords with a statement made by the FW De Klerk Foundation in July 2021 which confirmed that there existed "an informal agreement between the ANC leadership and former operatives of the pre-1994 government" which ensured that "the NPA suspended its prosecutions of apartheid era crimes" (the "FW Statement"). The statement is annexed hereto as "DBN2."


DUMISA BUHLE NTSEBEZA

Signed and sworn to before me at SANDTON on this the 14 day of November 2025, 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.

Thembelihle Tshabalala
The Central, 98 Rivonia Road
Sandton, Johannesburg, 2196.
Commissioner of Oaths
Ex-Officio / Practising Attorney R.S.A.

COMMISSIONER OF OATHS
FULL NAMES:
PHYSICAL ADDRESS:
DESIGNATION:

"DBN1"

Full Transcription of Interview with Adv. Dumisa Ntsebeza

SPEAKER: Well, parts of the affidavit to which he refers were published, bits of it in the Business Day this morning, quoting from that affidavit by the former NPA head Vusi Pikoli saying that the reason people who were denied amnesty have not been prosecuted is because of political interference by people within our government. Advocate Dumisa Ntsebeza is the former head of the investigative unit for the TRC. He's on the line now from Morningside in Joburg. Advocate Ntsebeza, good afternoon to you. Thank you for your time today. Do you think Pikoli is right that there was political interference here?

ADVOCATE NTSEBEZA: Well, he is confirming what we have been saying since the days that we were dealing with the prosecution. I recall that there was a post-TRC conference, I think it was not a conference, yeah, a gathering in Cape Town at which this very same topic was being canvassed. Why are the prosecutions not taking place? And because I was the former head of the investigative unit, I was on that panel and I said, I can find no answer because, you know, everybody knows, the bargain was that people will not be prosecuted if they come and apply for amnesty. If those who should have applied for amnesty do not come forward or they come forward and because they do not make a full disclosure, they do not get amnesty, then they will be prosecuted. And I concluded then, and I said so, that there is a lack of political will on those who should be making sure that the prosecutions take place. Now, Vusi Pikoli has had the courage, and I have got to commend him for it. He has said so now in so many words that he was being, you know, told, you know, along this whole thing about him being forced to resign and find the group of ministers. You know, can only point to one thing and one thing only, that there was a reluctance on the part of the ruling party or those who were ministers in the ruling party to do the prosecutions.

SPEAKER: Do you think, I mean, Advocate Pikoli suggests the reason for this was that some people in the ANC were worried some of their members could face prosecution. Do you think that's really the case?

ADVOCATE NTSEBEZA: Well, you know, the signs were there because they are part of the order. I mean, once he made the point, he said, we have been investigated and right to the top. And of course in those days they were, ah, Pikoli is, you know, he's lying and what have you. But now that there is somebody who was in the system who says there was an occasion when he was called and he was, you know, not to bother with these prosecutions. There is, that is now proof of what we have always suspected. It actually reminds me of an occasion when I was accosted as head of the investigative unit by top generals in the South African Defence Force and in the, in the army and in the SAPS. You're saying, look, I, you don't understand why you are going, uh, at this rate in seeking to do your investigations because you do not understand that you are being the deal. I said, what deal? He says, no, well, you know, those who are in the top leadership of the ANC know exactly what we are talking about. We have got, uh, dossiers which we have, which if we reveal, would compromise the, the, those a number of those who are in government. So I said, look, my mandate as a commissioner and as the head of the investigative unit is to unearth those gross atrocities which amount to gross violations of human rights and other crimes which took place in the context of the political conflict of the past. That's the mandate I have from the act and from the commission.

SPEAKER: Advocate, do you believe that if the prosecutions haven't taken place, it almost renders the whole Truth Commission process useless or worthless?

ADVOCATE NTSEBEZA: Well, I wouldn't go so far as to say it renders it worthless because, you know, one of the gains of the TRC, despite all its many failings, and I've been one of those who has said, you know, it has had its shortcomings, is the fact that it put additional facts on the table which but for the TRC would not have been there. You must recall that the system, the apartheid system had a system of destroying evidence. That was done. You know, uh, you know, and consequently, it was difficult to get information. But when people saw, for instance, that Biko of all people had been, had not only been arrested, tried, but had been convicted and sentenced to long terms of imprisonment, some of them started to come because they began to realise if they don't come, they don't align with what the TRC was offering them, then they would not be, they might get the Biko way. And as a consequence of that, it was possible to get some information. Like for instance, the

Nokuthula information, we've got to know that Nokuthula was hijacked from a hotel here in central Johannesburg and she disappeared. But we know from some of those who applied for amnesty, uh, some of the truth, which is why it is absolutely obnoxious that the Nokuthula case has not been prosecuted at all. And I do support, speaking for myself, I do support the action that has now been taken by SAHR and other organisations assisting Nokuthula and her family to get this matter properly inquired.

SPEAKER: Advocate Dumisa Ntsebeza, thank you very much indeed for that. The former head of the investigative unit for the Truth and Reconciliation Commission.

1

THE NPA'S DECISION TO PROSECUTE 'APARTHEID ERA' CRIMES

FW de Klerk Foundation Editorial

On 27 June the NPA welcomed the judgement of the Supreme Court of Appeal to dismiss the stay of prosecution application of 82-year-old Joao Rodrigues. Rodrigues had been charged with the murder of Ahmed Timol, an SACP activist, in October 1971. It added that the judgement aligned with its commitment - and the commitment of the Hawks - to prosecute perpetrators of apartheid era crimes - where there was sufficient evidence.

The NPA announced that it was expanding its capacity to deal with the 53 cases that it had already identified. It was setting up a specialist unit to deal exclusively with apartheid era prosecutions and would be appointing former prosecutors and 34 detectives for this purpose.

All of this ignores entirely the fact that amnesty was, from the outset, a *sine qua non* for the negotiations between the ANC and the National Party government. The NP government originally proposed that the Norgaard principles should be used to determine who should reasonably be granted indemnity or amnesty. The principles had been successfully applied in Namibia and allowed amnesty for all those who had committed offences in the pursuit of political objectives - unless they had made use of egregious or disproportionate violence. However, the NP government was forced to abandon the Norgaard principles as the ANC's price for returning to negotiations after 26 September 1992. The ANC demanded the release of all its cadres who were still in prison and insisted that political motive should be the only requirement.

The NP government adopted the Further Indemnity Act in November 1992 in terms of which the only substantive requirement for indemnity was political motive. 1 477 people were subsequently released from prison - the vast majority of whom were members of the ANC and allied organisations - and many of whom had been convicted for "necklace murders" and other egregious crimes.

One of the greatest failures of the NP's negotiators was their inability to conclude a comprehensive amnesty agreement before the 1994 elections. However, the final paragraphs of the 1993 Constitution stated peremptorily that "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" (emphasis added).

Nevertheless, the 1995 Promotion of National Unity and Reconciliation Act circumvented the clear intention of the interim Constitution and set conditions for amnesty that were far more onerous than those that the ANC had insisted on with regard to the release of its own supporters in terms of the Further Indemnity Act of 1992. The Act set a much higher standard for amnesty than political motive by requiring applicants to "make full disclosure of all the relevant facts relating to acts associated with a political objective" and to "comply with additional requirements set out in the Act." It was then up to the TRC's Amnesty Committee to decide whether or not the applicants had made a full disclosure. It was on this basis that the Committee refused amnesty to Janus Walusz and Clive Derby-Lewis for the assassination of Chris Hani - which, although reprehensible, had indisputably been a political act.

Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes. However, in June 2019, in another matter affecting Rodrigues, the Gauteng High Court instructed the National Director of Public Prosecutions, Adv Shamila Batohi, to enquire whether improper influence had been brought to bear on the NPA in suspending apartheid era prosecutions.



The result would appear to be the NPA's recently announced decision to proceed with the prosecutions. However, when it embarks on this course the NPA should give very careful consideration to the constitutional requirement that "everyone is equal before the law and has the right to equal protection and benefit of the law."

It would accordingly be unacceptable to apply one standard to "apartheid era crimes" and another to crimes perpetrated by anti-government organisations. And yet there is not the slightest indication in the NPA's statement that it has any intention whatsoever to prosecute the latter. This is despite the fact is that the vast majority of the approximately 22 000 people who were killed in political violence between 1984 and 1994 died in the conflict between the ANC and the IFP or as a result of the actions of other anti-government organisations.

The struggle has been meticulously documented in Anthea Jeffery's "People's War" - in which she exposes the ANC's campaign to eliminate its revolutionary competitors. Crimes committed by the ANC and other anti-government organisations included the assassinations of more than 400 IFP leaders and the necklace killings of more than 560 people. They also included the killing of 53 IFP protesters outside the ANC's headquarters at Shell House on 28 March 1994. Little or nothing has been done to investigate these killings or to bring those responsible to account. Yet each of these deaths also left grieving families searching for closure.

The NPA should also recall that amnesty was not granted to 27 senior ANC leaders - many who are still alive - who had applied unsuccessfully to the TRC for collective amnesty and who were in overall command of the ANC's revolutionary activities.

If the NPA chooses to prosecute only those from the anti-revolutionary side it will be in clear breach of its constitutional obligation to exercise its functions 'without fear, favour or prejudice.' If it does not act in a scrupulously even-handed manner, it will be difficult to avoid the perception that the trials that would ensue would be political trials.

The question arises why the NPA is so intent on pursuing a course of action that is likely to polarize even further our deeply divide society? Why is it committing so many of its limited resources to raking over crimes that occurred more than 27 years ago - instead of the prosecuting the rampant corruption that is tearing the country apart - or trying to bring to justice the killers of the 21 325 people who were murdered last year (i.e., almost the same number as those who were killed in the political struggle between 1984 - 1994)?

One-sided prosecutions would be irreconcilable with the 1993 Constitution's call for 'understanding but not for vengeance'; reparation but not for retaliation; and 'ubuntu but not victimisation'.

families ultimately had to launch an application to the High Court early last year 2025, in which part of the relief they sought was an order compelling the President to establish a Commission of Inquiry and then as we know, that matter was partially settled when the President agreed to establish a Commission.

What is your reaction to the fact that it appears that your recommendation was not taken forward in relation to a Commission of Inquiry and that the, several of the families then had to launch a substantial application to court in order to get this Commission?

10 ADV NTSEBEZA: And to be frank, my reaction was not dissimilar to the reaction that we as TRC Commissioners had had when you know, there clearly was a need for investigation of those cases in relation to which amnesty had not been granted, but there had been no steps that had been taken. Because we must understand that ability was always that of what needs to be done about TRC-related cases, they cannot just disappear, especially those cases, 300 odd cases in relation to which amnesty had not been granted on whatever basis.

20 My sense is that it would have been a travesty of justice for nothing to happen, so I had expected that there would be prosecutions and/or further investigations as was required by the law, accountability.

ADV VARNEY: Thank you. Now I want to turn to your supplementary affidavit that is at page 11 of your bundle and you will recall that towards the end of last year you brought to the attention of the families' legal team an incident that took place while you were a

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TRC Commissioner during the late 1990s and you stated that you needed to bring this incident to the attention of the Commissioners. It deals with your encounter with the late General Tienie Groenewald and other former SADF officers.

Now I am going to ask you because I think it is quite important for the Commission to hear this, I am going to ask you to read into the record paragraphs 5 to 16 of the supplementary statement. It is at page 11 of bundle.

ADV NTSEBEZA: Yes.

10 ADV VARNEY: Paragraph 5 is at the bottom of the page, ja.

ADV NTSEBEZA: Yes, I see, I see that. I can still remember that, but anyway. If I have not covered it in the way in which I still remember it in these pages, I will do so with the permission of the ...[intervenes]

ADV VARNEY: Yes, you are free to add anything you wish afterwards.

ADV NTSEBEZA: Well perhaps let me perhaps pre-reading this by saying it was a very strange request, because you know, the late Chairman of the Commission, Archbishop Desmond Tutu and the late
20 Chair of the Commission, Alex Boraine. They called me with Mr Magadla and said, "Hey listen here, we received a call and there has been a request that the, you know, those who are in the Security Services want to see and meet you because they have something to indicate to you".

I did not know whether Dr Boraine and the Archbishop knew

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exactly what it was beforehand and I then you know, took Mr Magadla with me and we were, came to a place in Central Johannesburg. It was known then as the Joburg Sun which was a very prestigious hotel and we were told to go to a particular floor and we went there.

And I think what I am indicating here is something that has lived with me as a matter of concern for quite some time, because we were being confronted by particular the late Tienie Groenewald, Dr Tienie Groenewald with digging too deep in our investigations which was against what had been agreed upon. That is how it came
10 across to us and then he told us that there had been an agreement that you know, the TRC would you know, would not dig as deep as we were especially in the investigation of these violations of human rights.

And the rest is covered in this affidavit, because we listened and at the end of it we, we simply said okay, we have heard but that you know, we do investigations at the behest of the Archbishop and the you know, and the TRC Commission in its entirety, but that we do not have that kind of instruction, we are not aware that there were exceptions that we were supposed to make in our investigation of
20 gross violations of human rights as defined by the Act. So I can ...[intervenes]

ADV VARNEY: Thank you.

ADV NTSEBEZA: I can... Yes.

ADV VARNEY: Yes, I think with that overview it would be useful for the Commission to hear the detail from paragraphs 5 to 16.

ADV NTSEBEZA:

- 10 "5. I wish to bring to the attention of the Commission a recent recollection I had regarding an interaction I had during or about 1996 or 1997 with former senior officers of the former South African Defence Force ("SANDF"), including Major-General Pieter Hendrik "Tienie" Groenewald.
6. Groenewald was a Major-General in the South African Defence Force and was Head of Military Intelligence in the mid-1980s under President PW Botha.
- 20 7. Groenewald had been involved in clandestine operations to assist the UNITA and RENAMO rebels in Angola and Mozambique; and in South Africa in the mid-1980s he spearheaded secret SADF support, including "offensive paramilitary" support for Mangosuthu Buthelezi's Inkatha movement for purposes of promoting division and violent instability among black people.
8. Groenewald was also a key figure in the early 1990s "Committee of Generals" that opposed the political transition and supported the creation of an independent Afrikaner state. The "Committee of Generals" was formed around 1993, following the assassination of Chris Hani, with the goal of uniting

right-wing groups. Other prominent members included General Constand Viljoen, Lieutenant General Koos Bischoff, Lieutenant General Cobus Visser and Lothar Neethlingh, ex-Deputy Commissioner of Police.

9. Groenewald died on the 2 November 2015.

10. Around 1996 or 1997 I was asked to attend a meeting with Groenewald and other former senior SANDF officers at the Johannesburg Sun and Towers Hotel. I was accompanied by Lwandle Wilson Magadla, the Head of the TRC's Special Investigative Unit. Magadla died in August 2011.

11. I believe that this meeting has significant relevance for this Commission. At this meeting, Groenewald and his colleagues, urged me to cease investigations against the former apartheid Security Forces, since they had an agreement in place with the ANC that apartheid-era crimes would not be pursued.

20 12. Around this time the TRC had recovered a large number of SADF and Military Intelligence ("MI") documents under a search and seizure warrant.

13. I recall that Groenewald expressed shock at how rigorously the TRC was pursuing its mandate, given that there had been an agreement between

the ANC, the National Party and high-ranking officials of the SADF not to investigate those involved in past conflicts. He also said that they were in possession of dossiers which seriously compromised senior ANC officials.

- 10 14. I informed Groenewald that in respect of my investigations of the TRC, I take instructions only from the Chair of the TRC, Archbishop Tutu, and no one else. I recall that at some point after the meeting, Magadla and I reported to Tutu and Alex Boraine, the Deputy Chair of the TRC. They advised us that we had adopted the right approach in our encounter with the generals. Nobody else was present in that meeting. Boraine died in 2018, and Tutu died in 2021.
- 20 15. At the time, I do not recall making a written recordal of this engagement or the contents thereof. I do, however, recall speaking on the issue with a Cape Town based radio station, although I have not been able to find a recording of the interview. Some years later in 2015, when I was interviewed by Stephen Grootes on Cape Talk/702, I made reference to this encounter. A transcribed copy of the relevant portion of this interview is annexed hereto marked DBN1.

10 16. The remarks by Groenewald accords with what has since been alleged about an informal agreement not to pursue the TRC cases. In particular, it accords with a statement made by the FW De Klerk Foundation in July 2021 which confirmed that there existed "an informal agreement between the ANC leadership and former operatives of the pre-1994 government" which ensured that the "the NPA suspended its prosecutions of apartheid era crimes" (the FW Statement). The statement is annexed hereto at DBN2."

ADV VARNEY: Thank you. Actually let us turn to the statement of the FW De Klerk Foundation on page 16 and as you can see, the heading is titled, "The NPA's decision to prosecute 'apartheid era' crimes, the FW De Klerk Foundation Editorial" and then just by way of background, we know that this statement was issued in July 2021.

20 Now FW De Klerk himself died months later on the 11 November 2021, so I think we can assume that he approved the issuing of this statement or as it is called an editorial. Now this editorial makes reference to the Rodriques case which we have discussed and statements of the NPA subsequently made, pointing out that it will proceed with prosecutions. And perhaps you can just read into the record the last paragraph on this page.

ADV NTSEBEZA: On page 16?

ADV VARNEY: Page 16, the paragraph at the foot of the page.

ADV NTSEBEZA:

“Because of an informal agreement between the ANC leadership and former operatives of the pre-1994 government, the NPA suspended its prosecutions of apartheid era crimes. However, in June 2019, in another matter affecting Rodrigues, the Gauteng High Court instructed the National Director of Public Prosecutions, Adv Shamila Batoyhi, to enquire whether improper influence had been brought to bear on the NPA in suspending apartheid era prosecutions.”

ADV VARNEY: Thank you. So Adv Ntsebeza, now we have a situation where in the late 1990s you have this encounter with former senior SADF officers who indicate to you that there is an arrangement or an agreement in place not to pursue these cases and they take exception with your rigorous investigations.

And then in 2021, we hear from effectively FW De Klerk through the FW De Klerk Foundation saying that there was an informal agreement between the ANC leadership and the former operatives of the apartheid era government to suspend its prosecutions of these cases. What is your reaction to that and do you think it serves to explain why there has been so little progress in the TRC cases?

ADV NTSEBEZA: Ja, I think the FW De Klerk statement puts it more succinctly than I will ever quote. It is not, it does not appear to me to

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be an inference that should be drawn from the events, it appears to me very clearly to be stating what the Foundation and the ANC had agreed upon, no prosecution of apartheid era crimes.

And that is what triggered in me what Tienie Groenewald had said to me and Ntate Magadla when we met him at the Joburg Sun as previously indicated, this is as explicit a statement as one could find of what a functionary of the De Klerk Foundation seems to confirm, namely of an agreement between it, I mean the ANC and whoever was, who was going to be speaking on behalf of the South
10 African Government of that time.

So if one was going to be speculating about what Tienie Groenewald was meaning when he says, you know you seem to be digging too deep, I am not using exactly the words he used, then at least a subsequent statement, the one that I had been asked to read into the record, seems to be very clearly indicative of the existence of an agreement you know, and unfortunately we do not know the terms of that agreement, what they are.

ADV VARNEY: Thank you. Now before this Commission there has been a narrative emerging from the government parties to this
20 Commission. I think without exception that and the narrative goes as follows, there was no interference or obstruction in the TRC cases, certainly not by the Executive and that the failure to proceed with most of the prosecutions can be attributable to the fault of individual prosecutors who failed to do their jobs.

So I want to seek your response to that narrative in the light