

**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**

SUPPLEMENTARY STATEMENT OF THABO MVUYELWA MBEKI

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 supplementary statement 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; and
 - 2.4. further alternatively, obtained through public records.

3. I make this supplementary statement to clarify and supplement what is stated in my statement dated 5 October 2026 ("**my main statement**") at paragraphs 35 to 38 and 86. To the extent that any other clarifications may be required, I will provide these orally when I appear before the Commission.
4. As appears at pages 67 to 68 of the paginated bundle containing my speech to Parliament on 15 April 2003, I addressed, amongst other things, two major specific details that the TRC enjoined us to address in its Report. These were:
 - 4.1. the matter of reparations (at page 67); and
 - 4.2. the issue of amnesty (at page 68).
5. The issue of reparations is not relevant to the terms of reference of this Commission. The issue of amnesty is.
6. On the issue of amnesty, I addressed the Government's response to the position of those participants in the conflict of the past who did not take part in the TRC process. These included those that had not been prosecuted and convicted for any crimes committed ("**first category of participants**"), and those that had been prosecuted and convicted in respect of such crimes ("**second category of participants**").
7. The first and second category of participants have been referred to generally as "*the unfinished business*" of the TRC. This description has been applied by the highest Court in the land – the Constitutional Court.¹ It is not to be confused with

¹ *Albutt v Centre for the Study of Violence and Reconciliation and Others* (CCT 54/09) [2010] ZACC 4; 2010 (3) SA 293 (CC) ; 2010 (2) SACR 101 (CC) ; 2010 (5) BCLR 391 (CC) (23 February 2010) (*Albutt*) para 4:

"On 21 November 2007, former President Mbeki announced a special dispensation for applicants for pardon who claimed that they were convicted of offences that were politically motivated. This dispensation was aimed at dealing with the "unfinished business" of the Truth and Reconciliation Commission (the



the TRC cases, being the cases that were referred by the TRC to the NPA for prosecution. I conveniently referred to the unfinished business cases in my main statement as the "**pardon cases**".² I am advised that strictly speaking under the law, the description "*pardon cases*" would refer to the second category of participants. But I used this description for convenience to avoid the loose description of TRC cases as stated in paragraph 36 of my main statement.

8. I made it clear in my speech to Parliament on 15 April 2003 that we left it to the NDPP, supported by our intelligence agencies, to address the first category of participants in line with the law. I do not repeat what I specifically said in the speech in this regard, as this is already addressed in my main statement and may be clarified during my appearance before the Commission.
9. Both the first and second category of participants do not include persons who unsuccessfully applied to the TRC for amnesty and whose cases were referred to the NPA for prosecution. That remained, and remains, the business of the NPA to prosecute. For this reason, it is difficult to understand the allegation that the "*seeds of the political interference [with the TRC cases referred to the NPA for prosecution] were laid in the deliberations that led to the strategies that are reflected*" in my speech to Parliament on 15 April 2003.³ I deny the allegation.
10. At paragraphs 35, 84 to 86 of my main statement, I deal with the second category of participants. I address the special dispensation for pardons that I introduced

TRC).⁶ This "unfinished business" included "the question of amnesty for many South Africans who had not participated in the TRC process for a number of reasons".⁷ As the former President explained: "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'."

² Paragraphs 36-38 of my main statement read with pages 67-68 of my speech to Parliament on 15 April 2003.

³ Witness bundle page 89 paragraph 126.



to deal with this category of participants. The discussion there is incomplete. I supplement and correct it as follows:

10.1. Paragraphs 35 and 85 stand as they are.

10.2. Paragraph 86 is incomplete and contains an error that I must correct. The criticism referred to in paragraph 86 by the Helen Suzman Foundation and the Chairperson of the TRC, the late Archbishop Emeritus Desmond Tutu regarding the lack of transparency was followed by my speech to Parliament on 15 April 2003. I have already addressed the speech.

10.3. The statement that the Minister of Justice and Constitutional Development at the time, Mrs Brigitte Mabandla, referred publicly on 5 January 2007 to the need to develop a policy on pardons is inaccurate. The relevant press release did not say that Ms Mabandla stated the need for a policy on pardons. It referred to the issue of pardons in the context of the second category of participants as being a complex matter and said nothing about the need for policy. I attach a copy of the press release of 5 January 2007 as "TMSupp1".

10.4. On 21 November 2007, I announced a Special Dispensation for applicants for pardons who claimed that they were convicted of offences that were politically motivated. This included terms of reference.⁴ I attach a copy of my address to Parliament in this regard as "TMSupp2". I also

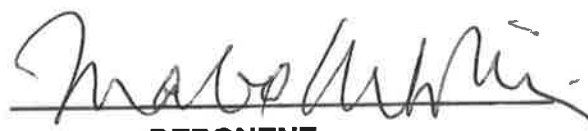
⁴ Albutt paras 4-7 and footnote 9.

attach a copy of the terms of reference for the Special Dispensation as "TMSupp3".

10.5. Applications for pardons were submitted and dealt with in terms of the special dispensation.⁵ The processing of the applications under this special dispensation took place after I had left office. However, it is a matter of public record that the process involved the participation of victims after the Constitutional Court found in *Albutt* that not providing for the participation of victims was not capable of achieving the twin purpose of the pardons process, namely, national unity and national reconciliation, and was irrational.⁶ These are the same objectives sought to be achieved through the TRC process.

11. I must clarify that the April 2003 speech did not, in terms refer to the Prosecution Policy and the Presidential Pardons.

12. I trust that this supplementary statement will further clarify matters and assist the Commission in its proceedings. I ask that it be admitted into the record of the Commission.


DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to before me at ~~Johannesburg~~ on this the 16th 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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⁵ *Chonco and Others v President of the Republic of South Africa* (CCT94/09) [2010] ZACC 7; 2010 (6) BCLR 511 (CC) (16 March 2010).

⁶ *Albutt* paras 53-69.


**MURISON
& ASSOCIATES**



Response to media reports about the South African Human Rights Commission's findings on presidential pardons

5 January 2007

The Ministry of Justice and Constitutional Development would like to respond to the media reports about the findings of the South African Human Rights Commission (SAHRC) in relation to Inkatha Freedom Party's (IFP) complaint about the processing of presidential pardons for alleged political prisoners.

Firstly, we would like to point that Minister Mabandla has as yet not received any official report with regards to its deliberations, findings, and basis of the findings from the SAHRC. What the Minister has received is a letter from a Legal Practitioner at the SAHRC advising her of the findings. We have requested the report, and it is only after its receipt that the Minister will be in a position to respond fully.



Minister Mabandla has on numerous occasions indicated that this is one of the most difficult and sensitive post Truth and Reconciliation Commission (TRC) matters. It is for this reason that from the beginning she has fully liaised with all the political parties and other interested parties in an attempt bring final closure to this matter. In response to Parliamentary questions and to the SA Commission request for information, Minister Mabandla indicated that the matter of presidential pardons for prisoners, who allege that their offences were politically motivated, is a complex matter that has no legal precedent and therefore one that requires a political solution. Some of the complexities that the Minister referred to in her response to a question on this matter are:

1. Some of the applicants failed to utilise the TRC processes that were available to them because their political parties did not support the TRC
2. Some of the applicants plead ignorance to the TRC processes
3. Offences that some of the applicants are alleged to have committed took place after the cut off date for TRC amnesty applications

It is because of these complexities their political nature and sensitivities that the Minister deemed it fit to solicit the collective wisdom of Cabinet in dealing with the matter, and not incompetence of any sort.

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

21 Nov 2007

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

Cape Town

21 November 2007

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

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

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

This day, the 21st of November, holds some special and tragic memories for a number of families in our country, especially those of Mamelodi in the Tshwane Metropolitan City. On this day in 1985, a protest demonstration of thousands of

local residents was brutally ended by police bullets and teargas, leaving 13 people dead and many others maimed for life.

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

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

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

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

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

As far as we know, their families and indeed the families of the many who died in similarly horrible circumstances have not asked for vengeance, but have insisted on a process of healing. They have not asked for retribution. Rather

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they have requested that all of us should sustain the memory of the heroes and heroines in everything we do.

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

Honourable members,

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

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

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

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

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

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

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

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

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

Honourable members,

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

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

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

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

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

When I was privileged to address a Joint Sitting such as this one, on 15 April 2003, tabling the Final Report of the Truth and Reconciliation Committee,



I referred to one element of this "unfinished business". I said:

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

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

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

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

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

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

Honourable members,

For some time since the year 2000, government has been seized of the challenge to bring to a close the vexing matter of those prisoners serving sentences for what might be considered to be politically motivated crimes of the kind that fell within the brief of the Amnesty Committee of the TRC. In

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dealing with the challenges I have outlined, we have had to proceed with care, sensitive to the legacy of the TRC.

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

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

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

Honourable members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The process we are proposing will be of limited duration. It will have to be strictly managed in terms of the mechanisms and procedures which are to be put in place to ensure that the requests for pardon for the category of persons we have mentioned are dealt with in an open and transparent manner, uniformly and in strict compliance with predetermined procedures and criteria.

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

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

Honourable members,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I thank you for your attention.

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21 November 2007

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

WHEREAS there are individuals convicted for having committed offences they believe were in pursuit of political objectives;

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

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5. **AND WHEREAS** the President has declared a special dispensation for obtaining closure on the matters relating to the convictions of those persons who allegedly committed offences in pursuit of political objectives.

NOW THEREFORE:

I ESTABLISHMENT OF A REFERENCE GROUP (RG)

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

2. RESPONSIBILITY OF THE REFERENCE GROUP

- 2.1 -Receiving of all screened applications for pardon from the Department of Justice and Constitution Development (DOJ&CD).
- 2.2 Ensure that each application for pardon is completed in a prescribed manner,
- 2.3 Consider each application for pardon and make recommendations to the President..

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2.4 The RG must develop its own rules and procedures in considering each application for pardon for purpose of making recommendations to the President based on each application. .

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

3. ADMINISTRATIVE SUPPORT TO THE RG

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

4. SITTING OF THE REFERENCE GROUP

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

5. FINANCIAL IMPLICATIONS 5.1 No member shall be

remunerated for his or her services in the RG.

5.2 The DOJ&CD shall be responsible for all logistical and travelling expenses of members of the RG.

5.3 All logistical arrangements relating to the work of the RG shall be made by a designated official within the DOJ&CD.

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6. LIFESPAN OF THE REFERENCE GROUP

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

7. WHO QUALIFIES FOR PARDON

- 7.1 Persons who were convicted and sentenced solely on account of allegedly having committed politically motivated offences before June 16, 1999; and

- 7.2 Comply with the pre-determined criteria and procedures as set out in the application form, may apply to the President for pardon in the prescribed manner.

- 7.3 A person will only qualify for consideration for pardon If —

- (a) he or she
 - (i) is presently serving a sentence of imprisonment,
 - (ii) was sentenced to a term of imprisonment or a fine for an offence which arose from or is related to, an act or omission associated with a political objective committed in the course of the conflicts of the past;
- (b) the offence referred to in paragraph (a) was committed on or before the date of the inauguration of the President on 16 June 1999; and
- (c) his or her application for pardon is accompanied by a prescribed affidavit or affirmation deposed to or affirmed by a person authorized by a political party or organization, institution, liberation movement or body, in which it is confirmed that the act or omission which constituted the offence in question, occurred under the instruction of, or in the execution of an order, instruction, command,

direction, advice, plan or project of, or on behalf of, or with the approval of, or in furtherance, promotion or achievement of the policies, objectives or interests of, the said party, organization, institution, liberation movement or body of which the applicant was a member, agent or a supporter'.

8. WHO DOES NOT QUALIFY FOR PARDON

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

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

9. LODGEMENT OF APPLICATION

9.1 Only applications which are completed properly and fully in the prescribed manner, including on a prescribed form specially designed for the purpose

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of this special dispensation, within the period of the 'window of opportunity, will be considered.

9.2 Only an application lodged by an individual will be considered. An application must be made by an individual applicant as prescribed and submitted to the DOJ&CD.

9.3 A political party -to which the applicant belongs may also submit the application to the DOJ&CD on his / her behalf.

9.4 In the event of the application being submitted by the political party on behalf of the applicant; the political party must

9.4.1 ensure that the application has been completed in the prescribed manner,

9.4.2 confirm under oath that the alleged circumstances around which the offence was committed are correct or consistent with the political events / activities of which the political party was part.

10. RECOMMENDATIONS BY THE RG

-x 10.1 All recommendations made in respect of applications for pardon must be submitted to the President.

10.2 Recommendation by RG shall be made in respect of each application for a pardon. .

10.3 The recommendation made by the RG in respect of each application for pardon must reflect the majority as well as the minority views of members, if any, in respect of each application.

10.4 The President has the power to reject the recommendations made by the RG.

11. POWER TO GRANT PARDON

11.1 The President after considering the recommendations made by the RG, has the power to grant or refuse an application for pardon.

11.2 No person has the right to be pardoned by the President.

11.3 The granting of a pardon to any person will lead to the expungement of the conviction and the criminal record of the offence in respect of which he or she is granted pardon.

Enquiries:

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