


401
JULY
APP7.

VOLUME TWO

Truth and
Reconciliation
Commission
of South Africa
Report



JPP1. 402

detainee who had just been returned to the prison after a session of interrogation, "Hy het dit seker nodig gehad" (He probably deserved it).

Deaths of detainees held in terms of security legislation

166 The Commission was told of a number of cases where the victim died while detained under security legislation.

'Suicides'

167 In the following cases the police said the death was the result of suicide:

- a Mr Looksmart Ngudle [CT00504/GAU; also see EC0127/96/CCK] died on 5 September 1963 in Pretoria, allegedly a suicide by hanging, following electric shock torture.
- b Mr Suliman Saloojee [JB01711/01ERKWA] died on 24 January 1964 after allegedly jumping from a window.
- c Mr James Thabiso Lenkoe [JB00092/01GTSOW] died in Pretoria Central prison on 10 March 1969. Police claimed he had committed suicide by hanging. A pathologist report established that he had been tortured and possibly killed.
- d Mr Ahmed Timol [JB00173/03WR] died on 27 October 1971 at John Vorster Square in Johannesburg. According to the police, he committed suicide by leaping out of the window of a tenth-floor office.
- e Mr Luke Mazwembe [CT00516/FLA; EC1249/96BUT; CT01307/KAR] died in detention in Cape Town in 1976, after allegedly "hanging himself with a blanket".
- f Mr Mapetla Mohapi [EC0007/96PLZ] died at Kel Road police station, East London, on 5 August 1976. Ms Mohapi was told by the police that her husband had hanged himself with his jeans. However, a 'suicide note' from Mohapi was apparently not in his handwriting.
- g Mr Hoosen Haffajee [KZN/NG/006/DN] died in Brighton Beach police cells, Durban, less than twelve hours after having been detained, on 3 August 1977.
- h Mr Mxolisi Johannes 'Dikkie' Jacobs [CT04205/UPI] died in Upington police cells on 22 October 1986, another alleged suicide by hanging.
- i Mr Phakamile Harry Mabija [CT00135/KIM; also see CT00635/KIM and CT04513/KIM] died in detention in Kimberley on 7 July 1977 in an alleged suicide: he "jumped out of a window" on the sixth floor.


J Mr George Botha [EC1587/97PLZ] died in security police custody in Port Elizabeth on 15 December 1976, allegedly "suicide through jumping down a stairwell" of the Sanlam Building, the offices of the Port Elizabeth Security Branch offices.



k Mr Lungile Tabalaza [EC0002/96PLZ & EC2607/97PLZ] died at 15h00 on 10 July 1978, allegedly after jumping from the fifth floor window of the Sanlam Building in Port Elizabeth. At the inquest, the government pathologist acknowledged that several bruises and lacerations could have been sustained before the fall. A magistrate, Mr Lubbe, who saw Tabalaza less than an hour before his 'suicide', expressed regret for having failed to investigate Thabalaza's fears that he would be beaten if he did not make a statement when he was taken back to the Security Branch offices.

l Mr Neil Hudson Aggett [CT00410/FLA] was detained in November 1981 and died on 5 February 1982, allegedly having committed suicide by hanging.

168 The security police suggested that detainees had received instructions from the ANC to commit suicide rather than talk. Some claimed that they committed suicide in order to malign the Security Branch. Mr TJ 'Rooi Rus' Swanepoel was quoted in a November 1982 press article as saying: "It is a communist plot. If they commit suicide, they can cast doubts on the security forces."¹³

169 The Commission has taken into consideration the evidence of victims of torture which could well have led to death, especially those cases in which similar forms of torture *did* lead to death. A number of cases were recorded of detainees having their heads bashed against the wall and of detainees who were suspended by their feet outside windows of buildings of several storeys, raising the strong possibility that at least some of those detainees who allegedly committed suicide by jumping out of the window were either accidentally dropped or thrown.

 172 Mr Mfene Simon Yoyo [EC0653/96QTN] told the Commission that, during his detention in East London in April 1963, his interrogating officer said: "This person does not want to tell the truth. Then I think let's throw him out of the window ...". Yoyo said they lifted him up and hung him out of the window, threatening to let go.

 174 Mr Vusumzi Johnson Nyathi [JB02097/03WR], a detainee in the Bethal trial of *the State v Mothopeng and seventeen others*, survived after he was allegedly thrown out of the window during an Interrogation session. Nyathi, who suffered spinal injuries, was later charged and found guilty of trying to escape from custody. By 

¹³ *Rand Daily Mail*, 6 November 1982.

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the time the Bethal trial opened in December 1977, four persons detained in connection with the trial had died in detention. They were Mr Naboath Ntshuntsha, Mr Samuel Malinga, Mr Aaron Khoza and Mr Siphon Bonaventura Malaza. Nyathi later sued the Minister of Police without success.

175 The Commission also heard evidence of *bona fide* cases of suicide and accounts from detainees who said they had contemplated or attempted suicide. Mr Prema Naidoo spoke of his wish to commit suicide after revealing information after six days of unremitting torture: "I contemplated suicide, not because I was hurt or anything but because I felt I had betrayed the cause, the cause which I believed in."

176 The Commission is of the opinion that, given the extensive evidence of physical as well as psychological torture, suicides under conditions of detention should be regarded as induced suicide for which the security forces and the former government are accountable.

'Accidental deaths'

177 In at least three cases which came before the Commission, the police claimed accidental death. Mr Nicodimus Kgoathe [JB00113/03NWRUS] and one of his co-accused, Mr Solomon Modlpane, both died in detention under the Terrorism Act in February 1969. The police explanation for Kgoathe's death was "bronchial pneumonia after slipping in the shower" and for Modlpane's death, "fatal injuries from slipping on a bar of soap".

178 Mr Joseph Mdluli [KZN/KM/999/DN], one of the accused in the case against Harry Gwala and nine others, died in detention in Durban on 19 March 1976. The official explanation for his death was "injury to neck after falling against a chair". While Judge Howard rejected allegations of torture made by detainees during the court case, he indicated in his judgement that the injuries sustained by Mdluli could not have been self-inflicted or caused accidentally, and found that most, if not all, of the injuries had been inflicted by the security police. In October 1976, four security police, namely Captain David van Zyl, Andy Taylor, Detective Sergeant H Makhanya and Detective Sergeant Z Mkhize, were charged with culpable homicide. All were later acquitted. In March 1979, the state admitted liability for the death of Mdluli and an out-of-court settlement of R28 616 was paid to his widow.

'Natural causes'

179 In the following cases police claimed death from natural causes:

- a Mr Mzukisi Melvin Nobadula [EC0662/96PLZ] died in detention in Port Elizabeth in December 1977. His brother identified his body in the mortuary and saw that there were scars, burn marks and blood on it. At the *post mortem*, however, the district surgeon, Dr Laing, said he had died of natural causes.
- b Mr Caleb Mayekiso [EC0644/96/PLZ] died in detention in Port Elizabeth in 1969 while being held under the Terrorism Act.
- c Mr Elijah Loza [CT00257/FLA] died in Cape Town in 1977, allegedly of a stroke. His family believes he was "tortured to death".
- d Mr Stanza Bopape [JB00500/02NPPTB] was reported at the time of his disappearance to have escaped while being transported. Amnesty applications received by the Commission indicate that he died in detention, following electric shock, but allegedly from 'natural causes' (see below).
- e Mr Paris Malatji [JB0409/01GTSOW], an AZAPO activist, was shot at point-blank range when in custody in 1983 at Protea police station. Sergeant January Harm van As was convicted and sentenced to ten years' imprisonment for the shooting, the first conviction for the death of a detainee.
- f Mr Andries Raditsela, a member of the Chemical Workers' Industrial Union (CWIU) and executive member of the Federation of South African Trade Unions (FOSATU), was detained and assaulted so severely at Tsakane police station on 4 May 1985 that he died of head injuries two days later May in Baragwanath hospital, after his release.

Deaths in detention under security legislation

180 The Commission is aware of the following deaths of detainees held under specific security laws, excluding those detained under emergency regulations. The attributed cause of death is included:

1964: Mr James Tyitya, Port Elizabeth: 'suicide by hanging';

1965: Mr Nengenl Gaga, Transkei: 'natural causes'; Mr Pongolasha Hoye, Transkei: 'suicide by hanging';

1966: Mr James Hamakwayo, Pretoria: 'suicide by hanging'; Mr Hangula Shonyeka, Pretoria: 'suicide'; Mr Leong Yun Pin, Pretoria: 'suicide by hanging'; Mr Ah Yan, Silverton: 'suicide by hanging';

1967: Mr Alpheus Maliba, South West Africa/Northern Transvaal: 'suicide by hanging';

1968: Mr Jundea B Tubakwe, Pretoria: 'suicide by hanging';

1969: Mr Michael Shivute, South West Africa: 'suicide'; Mr Jacob Monakgotla, Pretoria: 'natural causes'; Imam Abdullah Haron, Cape Town: 'slipped down stairs'; Mr Mthayeni Cuthsela, Transkei: 'natural causes';

1976: Mr William Tshwane, Modderbee: 'shot while trying to escape'; Mr Dumisani Mbatha, Modderbee: 'natural causes'; Mr Fenuel Mogatusi, Johannesburg: 'natural causes'; Mr Jacob Mashabane, Johannesburg: 'suicide by hanging'; Mr Edward Mzolo, Johannesburg: 'undisclosed'; Mr Ernest Mamasile, Transkei: 'suicide by hanging'; Mr Thabo Mosala, Transkei: 'natural causes'; Mr Wellington Tshazibane, Johannesburg: 'suicide by hanging';

1977: Mr Nabaoth Ntshuntsha, Leslie: 'suicide by hanging'; Mr Lawrence Ndzanga, Johannesburg: 'natural causes'; Mr Elmon Malele, Johannesburg: 'natural causes'; Mr Twasifeni Joyi, Transkei: 'undisclosed'; Mr Mathews Mabelane, Johannesburg: 'fell out of window'; Mr Samuel Malinga, Pietermaritzburg: 'natural causes'; Mr Aaron Khoza, Pietermaritzburg: 'suicide by hanging'; Mr Hoosen Halfajee, Durban: 'suicide by hanging'; Mr Bayempini Mbizi, Durban: 'suicide by hanging'; Mr Stephen Bantu Biko, Port Elizabeth: 'head injuries'; Mr Sipho Bonaventura Malaza, Krugersdorp: 'suicide by hanging';

1981: Mr Manana Mgqweto, Transkei: 'unknown';

1982: Mr Ernest Dipale, Johannesburg: 'suicide by hanging';

1983: Mr Simon Mndawe, Nelspruit: 'suicide by hanging'; Mr Paris Malatji, Johannesburg: 'shot in the head';

1984: Mr Samuel Tshikudo, Venda: 'natural causes'; Mr Mxolisi Sipele, Transkei: 'unknown'; Mr Ephraim Mthethwa, Durban: 'suicide by hanging';

1985: Mr Andries Raditsela, Johannesburg: 'head injury';

1986: Mr Makompe Kutumela, Lebowa: 'police assault'; Mr Peter Nchabaleng, Lebowa: 'police assault';

1987: Mr Benedict Mashoke, Burgersfort: 'suicide by hanging'; Ms Nobandla Elda Bani, Port Elizabeth: 'natural causes';

1988: Mr Sithembele Zokwe, Transkei: 'shot by police'; Mr Alfred Makaleng, Johannesburg: 'natural causes';

1990: Mr Clayton Sizwe Sithole, Johannesburg: 'suicide by hanging';
Mr Lucas Tlhothomisang, Klerksdorp: 'natural causes'; Mr Donald Thabela
Madisha, Potgletersrus: 'suicide by hanging'.

181 The Commission received statements about the following deaths in police custody. Although the Commission made a positive victim finding in these cases, it was not able to establish the exact legislation under which they were held at the time of their deaths.

- a Political activist Colenso Ninase Mnyane [EC0735/97ETK] died in detention in Tabankulu on 5 November 1967, either of heart failure or of injuries from a fall.
- b Mr Rocky James [EC0144/96/NWC] was shot dead while in custody in Cradock on 9 November 1977, allegedly while "trying to escape". A statement from a municipal policeman, Michael Adams, said James was severely beaten by a white policeman. When James pleaded for help, Adams attempted to intervene. During the scuffle with the white policeman, James attempted to run away and was shot dead. Adams subsequently lost his job. The family heard that James had been instructed by the police to run away and had then been shot in the back.
- c Mr Ephraim Thami 'Papi' Mthethwa [KZN/ZJ/146/DN], a UDF member, was detained and died two months later on 24 August 1984 in Lamontville. He was held in solitary confinement at Sentela police station. Police claimed he had hanged himself.
- d Congress of South African Students (COSAS) activist Siphon Mutisi [KZN/ZJ/115/BL] was detained and died on 14 May 1985 in Odendaalsrus, Orange Free State after being severely beaten.
- e In August 1985 Mr Thembelakhe George [EC0846/96/KWT] was assaulted by police, first at his home during his arrest in connection with the consumer boycott in Ginsberg, and then at the police station in King Williams Town. His family later found him in hospital where he died from injuries sustained from the assault. The inquest magistrate noted that the head injuries which caused his death could have been inflicted by the police.
- f Mr Amos Dendeng Sonnyboy Mokoena [JB00264/01GTSOW] died in detention in Pilgrims' Rest on 16 August 1985. The police told his mother he hanged himself in his cell. While the police allege that Mokoena was arrested on criminal charges, his mother alleges that he was politically active and had fled to Pilgrims' Rest to escape detention.

- g Mr Tota Alex Mfazwe [EC1363/96PLZ] was arrested in Queenstown on 5 July 1986, severely assaulted, and is alleged to have committed suicide by hanging himself at Queenstown police station on 6 July. The family reported that there were bruises and a big scratch on his face and that his clothes were badly torn.
- h Mr Nopola Njatu [EC0427/96/NEC] died after being beaten up in police custody in Sterkstrom in November 1986. Police alleged death due to an epileptic fit; but his family noted an open wound on his forehead. The inquest found that the cause of death was 'not determined'.
- i Mr Eric Ndongela Nongqo [EC1515/97NWC] died of neck injuries after being arrested and beaten up at the police station in Steynsburg on 18 July 1987.
- j Mr Paulus Radebe [KZN/ZJ/169/WE] was detained in 1987 in Welkom. He was tortured to death at the Odendaalsrus police station on 31 October 1987.
- k Mr Anthony Melville Smiles [EC0313/96/ALN], a political activist, was arrested in Dordrecht in 1988, allegedly for being drunk in the street. The police alleged that he had committed suicide in police cells by hanging himself with his overalls. The inquest report indicated that, while suicide was possible, death by other means could not be ruled out. The *post mortem* recorded that either the victim had attempted to loosen the overalls himself or that he had first been strangled and then hanged after death.

182 The Commission has received a substantial number of further cases of deaths in police custody. In many inquest reports, magistrates ruled that no one could be held accountable for the deaths of detainees.

183 The Commission received amnesty applications in respect of the deaths of only three detainees, namely Mr Stephen Bantu Biko, Mr Sizwe Kondile and Mr Stanza Bopape.

184 Stephen Bantu Biko died in police custody in Pretoria on 12 September 1977. He was detained by the Security Branch in Port Elizabeth twenty-four days earlier, and was subjected to interrogation, during which he sustained serious brain injuries. He was examined by both a district surgeon and a medical specialist (see Volume Four, chapter on the health sector hearing). He was then transported naked in the back of a police van from Port Elizabeth to Pretoria. He died from brain damage in a prison cell shortly after his arrival in Pretoria. On hearing the news of his death, Minister Kruger said: "It leaves me cold." He implied that

Biko had died as a result of engaging in a hunger strike. At the inquest, the security police claimed that Biko had "become violent" during interrogation and had to be "subdued" by the Interrogation team, in the course of which he hit his head against the wall.

- 185 Mr Harold Snyman [AM3918/96, Mr Gideon Nieuwoudt [AM3920/96], Mr Daniel Petrus Siebert [AM 3915/96], Mr Ruben Beneke Marx [AM3521/96] and Mr Jacobus Johannes Oosthuizen Beneke [AM6367/97] applied for amnesty for Biko's death. Brigadier Piet Goosen, head of the Security Branch in the Eastern Cape at the time of Biko's death, is deceased. Amnesty applicants held fast to the explanation they gave at the inquest. The Biko family did not make a statement to the Commission and are opposed to the granting of amnesty.
- 186 Mr Stanza Bopape [JB00500/02NPPTB] was arrested at around midnight on 9 or 10 June 1998, together with his flatmate Mr Bheki Nkosi [JB00500/02NPPTB] at their flat in Hillbrow. About twenty men, armed with guns, bush knives and bullet-proof vests and led by Lieutenant CA Zeelie [AM3751/96], jumped into the room. Zeelie asked Bopape whether he was 'ST' or 'Walk Tall', MK names by which Bopape was known. Bopape was then punched in the stomach. The last Nkosi saw of Bopape was at the Roodepoort police station. Nkosi himself was later subjected to electric shock torture.
- 187 After several queries from Bopape's lawyers as to his whereabouts, the SAP informed them that he had escaped. On 13 July 1988, then Lieutenant General Johan van der Merwe, head of the Security Branch, informed the lawyers that Bopape had "wilfully escaped" while "being escorted by motor vehicle to Vereeniging, where certain police investigations were in process. A flat tyre en route necessitated that the police vehicle stop and whilst the spare tyre was being fitted, your client made good his escape." Van der Merwe said that this escape had not been publicised for fear of jeopardising a sensitive police investigation regarding the movement and activities of trained "terrorists".
- 188 In an article that appeared in *Business Day* on 26 April 1989, Minister Vlok was reported to have announced that Bopape had been seen in an area where an act of terror took place. Similarly, on 15 June 1989 the *Sowetan* quoted Brigadier Leon Mellett of the SAP as saying that Bopape had been seen by a former colleague, whose name was not disclosed. On 19 June 1990, Vlok reported to Parliament that the investigation into Bopape's disappearance was continuing. He refused to disclose the names of the officers in whose care

Bopape had been at the time of his disappearance, but indicated his preparedness to do so if the Harms Commission wished him to. The Harms Commission decided that there were insufficient grounds for holding a hearing.

189 Bopape's disappearance remained unresolved until amnesty applications were received from Lieutenant Charles Zeelie [AM3751/96], Mr HAB Mostert [AM4403/96], Major AP van Niekerk [AM4353/96] and Mr JL du Preez [AM4404/96] for their role in his death. In addition, the head of the Security Branch, Lieutenant General JV van der Merwe [AM4157/96], Colonel S Visser [AM5000/97], Captain Leon van Loggerenberg [AM5010/97], Witwatersrand divisional commander Major-General GN Erasmus [AM4134/96], and Major General PL du Toit [AM4131/96] applied for amnesty for their role in covering up the death.

190 The amnesty applications reveal that a meeting was held on Saturday, 11 June at the offices of the Krugersdorp/West Rand Security Branch. The meeting was attended by about fifteen Security Branch members, including officers Mostert and Colonel Van Niekerk from Johannesburg. They were told that Bopape had been trained by MK member Odrile Maponya, and had been involved in and/or planned several terrorist attacks. Maponya's group, Mr MRA Toka and eleven others, had stood trial on several charges of murder and bombings in Pretoria.

191 On Sunday, 12 June 1988, Bopape was taken from his cells to the offices at John Vorster Square for questioning by Mostert and S/Constable Engelbrecht. After Bopape refused to co-operate, Van Niekerk, Zeelie, Mostert and Engelbrecht together decided that Bopape needed to be given a "little fright" to persuade him to co-operate. Colonel Van Niekerk approved the use of the electric shock instrument. A Sergeant du Preez brought the instrument from Sandton where it was kept. Van Niekerk relates:

We decided to tie Mr Bopape to a chair ... His shirt was removed, his hands were tied to the supports of the chair and his feet to the legs ... Sergeant du Preez had the shock device in his hand ... There were two cords running from the device and at the tip of it, these cords, there were two pieces of cloth which were wrapped around the tips of the cords. This device was turned three or four times by Sergeant du Preez and whilst he was turning it, Mr Engelbrecht pushed these cords against his body ... It didn't take very long, maybe two to four minutes, the device was turned, then it was stopped, then someone asked him if he wanted to say something and if there was no reaction to that, then the machine was turned again and this must have happened about three times. By the third time, Mr Bopape's

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TTPA

head fell forward and I realised there was something wrong. We immediately untied him, placed him on the floor and Sergeant du Preez gave him mouth-to-mouth resuscitation. It seemed that he was dead already and I think that all of us standing there ... all thought that he was dead.

192 The five officers discussed the possible consequences of Bopape's death and decided that they could be extremely serious. Aside from the negative publicity around yet another section 29 death, June 16 was only a few days away and the Security Branch feared that the news of his death could spark off violence. Colonel Van Niekerk reported the matter to his divisional commander, who discussed the matter with Lieutenant General Johan van der Merwe and they agreed that a fake escape should be arranged. Brigadier Schalk Visser, head of the Eastern Transvaal Security Branch, would assist with the disposal of the body.

193 As night fell, Stanza Bopape's body was secreted out of the police station. Members of the Johannesburg Security Branch met members of the Eastern Transvaal Security Branch next to a highway near Bronkhorstspuit, where they handed over the 'sensitive package' to Captain van Loggerenberg. Van Loggerenberg could see that it was a human body covered in plastic. He drove directly to a crocodile hole in the Komati River close to Komatipoort, near a picnic spot frequented by police officers. He pushed the body partially into the hole and it sank away. On his return he reported to Visser.

194 The applicants claimed that they only "turned the instrument two or three times" and that this was not sufficient to cause death in a healthy human being. They said that Bopape had previously been treated for a heart complaint at the Princess Clinic, that they had been unaware of this, and that his death must have occurred as a result. The Princess Clinic no longer exists and corroborating records are not available. However, Bopape's girlfriend claims that his treatment at the Princess Clinic was in connection with a nasal complaint.

195 Odirile Maponya, who is alleged to have trained Bopape, was blown up while allegedly laying a limpet mine in Pretoria in 1988. Maponya's brother was abducted and interrogated about his brother's network and killed (see below).

Applications for amnesty

196 While the Commission received thousands of statements alleging torture, few amnesty applications were received specifically for torture. Amnesty applicant

JPP 2¹
H11a.
A12

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION

Case number: 101/2017

In the matter of:

REOPENED INQUEST: LATE AHMED TIMOL

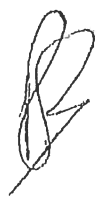
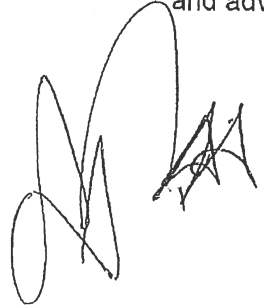
PIERS ASHLEY PIGOU

I, the undersigned

PIERS ASHLEY PIGOU

do hereby make oath and state:

1. I am an adult male residing in Johannesburg. I am the International Crisis Group's Senior Consultant for Southern Africa. Formerly, from 2011 I was Crisis Group's Southern Africa Project Director, overseeing the organisation's research and advocacy activities in South Africa, Zimbabwe, Madagascar and Angola.



JPP 2

2. I hold an M.A. in Southern African Studies from York University and a B.A. (Hons) in Politics from Portsmouth Polytechnic.

3. Before joining Crisis Group, I was:
 - 3.1. the Program Manager at the Foundation for Human Rights,
 - 3.2. a Senior Associate for Southern Africa at the International Center for Transitional Justice,
 - 3.3. Director of the South African History Archive,
 - 3.4. Research and Advocacy Coordinator at the Institute for Democratic Alternatives in South Africa/
 - 3.5. Researcher at the Center for the Study of Violence and Reconciliation;
 - 3.6. Investigator for the Truth and Reconciliation Commission in South Africa,
 - 3.7. International Advisor to the Truth Seeking Division of the East Timorese Truth, Reconciliation and Reception Commission.

4. I was attached to the investigation unit of the Gauteng office of the Truth and Reconciliation Commission.

5. During 1996 and 1997 I was asked to investigate the detention and death in custody of Ahmed Timol. I was able to identify and collate records from a range




- of state and private archives relating to Timol and others arrested during the sweep on activists during 1971.
6. During this period I spoke with the daughter of Joao Rodrigues, the police officer who, according to official records had been in the room with Timol when he allegedly jumped from the 10th Floor. I had been informed that Rodrigues' daughter has been encouraging her father to engage with the TRC.
 7. As a result of this interaction, I was able to locate and speak with Mr Rodrigues who at the time was working for SanParks. We arranged to meet in Pretoria at the SanPark offices. He indicated when we spoke telephonically that he was willing to discuss the case. Several days later I drove to Pretoria as arranged and met Mr Rodrigues at his place of work.
 8. However, at this meeting he was no longer amicable nor was he willing to cooperate. He came across as reticent and insisted that our entire interaction be recorded with a voice recorder. He was not willing to talk to me about what has happened with Timol and our interaction was concluded rather quickly.
 9. I indicated that the TRC needed to hear his version of events directly, and I informed him that I would be advising the TRC to subpoena him in terms of Section 29 of the TRC Act. I subsequently made such a recommendation to the Commission, but this was not done.




JPP 2

10. It appeared to me that between the time of my initial contact with Mr Rodrigues and the time we actually met, he had either by himself or as a result of the intervention of another, decided not to cooperate with the TRC.

11. As far as I am aware Mr Rodrigues never approached the TRC in order to disclose what he knew about the death of Ahmed Timol.


PIERS PIGOU

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and affirmed before me at LONDON on this the 4th day of AUGUST 2017.



COMMISSIONER OF OATHS

FULL NAMES: Nagendran Kandiah

DESIGNATION: Solicitor

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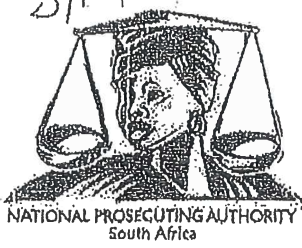




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JPP 3

3/16/11



OFFICE OF THE DEPUTY MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT CAPE TOWN
2016 -11- 03
CAPE TOWN
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MINISTERIAL MEMORANDUM

TO : T. M. MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES

FROM : ADV. S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

SUBJECT : REQUEST IN TERMS OF SECTION 17A OF THE INQUEST ACT, 58 OF 1959 TO REOPEN THE INQUEST INTO THE DEATH OF AHMED TIMOL

DATE : 25 OCTOBER 2016

1. PURPOSE

The purpose of this memorandum is to request the Honourable Minister of Justice and Correctional Services to invoke the provisions of Section 17A of the Inquest Act 58 of 1959, by requesting the Judge President of the Gauteng Division of the High Court of South Africa to designate a judge to reopen the inquest into the death of Ahmed Timol ('Timol').

2. BACKGROUND

2.1. In *Timol v The Magistrate of Johannesburg* 1972(2) SA 281 (T), the Court *inter alia* held that:

MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES
PRETORIA
2016 -11- 07
PRETORIA
MINISTERIE VIR JUSTISIE EN
KORREKTIEWE DIENSTE

Justice in our society so that people can live in freedom and security

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"... the Inquest must be so thorough that the public and interested parties are satisfied that there has been a full and fair investigation into the circumstances of the death".

- 2.2 Timol was a member of the Communist Party who was detained on 22 October 1971 by the Security Branch of the then South African Police at the notorious John Vorster Square Police Station.
- 2.3 On 27 October 1971 he died in detention while under interrogation by members of the Security Branch.
- 2.4 According to his Interrogators, Timol is alleged to have committed suicide by jumping out of a window on the 10th floor of the John Vorster Square Police Station building in Johannesburg.
- 2.5 The then Attorney General, Johannesburg, declined to prosecute and a formal inquest was held before a Johannesburg Regional Court Magistrate under reference Johannesburg 2361/71, which handed down a verdict that Timol had committed suicide and that the Police were not responsible for his death. The inquest commenced in late April 1972 and concluded on 22 June that same year.
- 2.6 The evidence comprised almost entirely of the Police Officers involved in his arrest, detention and interrogation, along with the medical evidence.
- 2.7 Due to the prevailing situation at the time, persons who were in detention or in exile did not testify. This resulted in the Regional Magistrate finding that Timol had committed suicide and had not been assaulted or ill-treated by the Police prior to his death.



JPP 5

- 2.8 The Regional Magistrate's finding was criticised by human rights organisations. Notwithstanding this, no further action was taken.
- 2.9 In addition, no one applied for amnesty for Timol's death during the Truth and Reconciliation Commission ('TRC').
- 2.10 As a result of representations received by the Priority Crimes Litigation Unit ('PCLU') in my office, the Directorate for Priority Crime Investigation ('DPCI') were requested to reopen the investigation into Timol's death.
- 2.11 It would appear that there is compelling new evidence relating to the torture, which if considered could result in a different finding.
- 2.12 In this regard, Dr Salm Essop ('Essop'), who was arrested with Timol on 22 October 1971, and who was subjected to severe torture at the hands of the self-same members of the Security Branch, was never permitted to testify at the ~~in the~~ inquest into Timol's death.
- 2.13 In short, Essop, who had been subjected to severe torture at John Vorster Square Police Station to the extent that he was rendered unconscious on numerous occasions, collapsed again on the morning of 26 October 1971, whereafter he was examined by a district surgeon. Whilst unconscious he was taken to the General Hospital in Johannesburg by ambulance where he received emergency medical treatment. Although still in an extremely fragile condition, he was thereafter taken to HF Verwoerd Hospital in Pretoria.



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- 2.14 Essop was later taken to Pretoria Central Prison where he was held *incommunicado*. He was thereafter secretly admitted into hospital and later to a prison hospital where he remained until his first court appearance in the Johannesburg Magistrate's Court on 8 March 1972 whereafter he was remanded in custody. On 13 June 1972 he was indicted on terror related charges along with three other co-accused in the Pretoria Supreme Court (as it was known then).
- 2.15 Essop's trial ended on 31 October 1972 when he and his co-accused were convicted on terror related charges and sentenced to five years' imprisonment.
- 2.16 At no stage did Essop present the facts of his torture during any judicial proceedings in the Republic of South Africa, nor was he afforded the opportunity to do so.
- 2.17 Recently, in a 37-page affidavit dated 14 October 2016, Essop extensively explains the circumstances of his and Timol's arrest and his subsequent harrowing brutal torture and inhumane treatment at the hands of members of the Security Branch.
- 2.18 Essop's eye witness account of Timol's condition at the time of their arrest, his own torture and assault at the hands of the Security Branch Police, contradicts the version of the members of the Security Police in so far as their treatment of Timol and the injuries sustained by him.

3. THE RELEVANT LEGISLATION

3.1 Although there is more than one section of the Inquest Act 58 of 1959 that can be used to reopen an Inquest, the most applicable is Section 17A, which reads as follows:

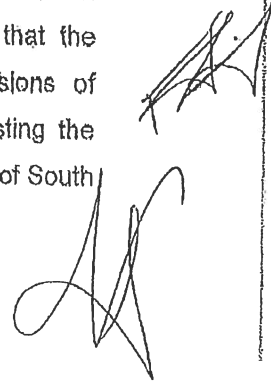
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"(1) The Minister may, on the recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court to designate any judge of the Supreme Court of South Africa to reopen that inquest, whereupon the judge thus designated shall reopen such inquest."

- 3.2 There are compelling reasons as summarised above along with the high public interest in this matter to motivate for the reopening of the said inquest.
- 3.3 Essop is a very credible and relevant witness who was not afforded an opportunity to provide his evidence during any judicial proceedings. The probability exists that there is a real likelihood that his version could result in a court coming to a different finding as to the circumstances surrounding the death of Timol than that of the Regional Magistrate Johannesburg in 1972.
- 3.4 As such, the interests of justice would justify the reopening of the inquest into the death of Ahmed Timol.
- 3.5 The Acting Special Director of Public Prosecutions and Head of the PCLU have consulted with the Directors of Public Prosecutions (DPPs) of South and North Gauteng in terms of the provisions of Section 24(3) of the National Prosecuting Authority Act 32 of 1998. Both DPPs are in agreement and have recommended that the Honourable Minister be requested to invoke the provisions of Section 17A(1) of the Inquest Act 58 of 1959 by requesting the Judge President of the Gauteng Division of the High Court of South



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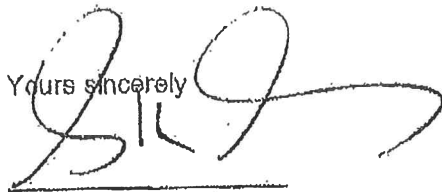
Africa to designate a judge to reopen the inquest into the death of Ahmed Timol.

4. RECOMMENDATION

4.1 It is recommended that the Honourable Minister of Justice and Correctional Services invoke the provision of Section 17A(1) of the Inquest Act 58 of 1959 by requesting the Judge President of the Gauteng Division of the High Court of South Africa to designate a judge of the High Court to reopen the inquest into the death of Ahmed Timol.

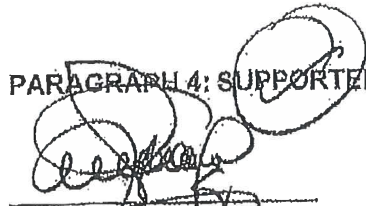
4.2 A copy of a draft letter addressed to the Judge President is attached hereto for the Honourable Minister's consideration.

Yours sincerely



ADV. S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 25-10-2016

PARAGRAPH 4: SUPPORTED / NOT SUPPORTED



JUST M. ADONSELA, Esq
DIRECTOR GENERAL OF JUSTICE AND CONSTITUTIONAL
DEVELOPMENT
DATE: 02/11/2016



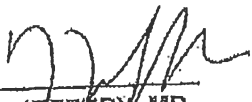
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4. RECOMMENDATION

4.1 It is recommended that the Honourable Minister of Justice and Correctional Services invoke the provision of Section 17A(1) of the Inquest Act 58 of 1959 by requesting the Judge President of the Gauteng Division of the High Court of South Africa to designate a Judge of the High Court to reopen the inquest into the death of Ahmed Timol.


4.2 A copy of a draft letter addressed to the Judge President is attached hereto for the Honourable Minister's consideration.

✓
PARAGRAPH 4: RECOMMENDED/ NOT RECOMMENDED


MR J. JEFFERY, MP
DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 3/11/16

✓
PARAGRAPH 4: APPROVED/NOT APPROVED

LETTER NOT SIGNED: IT NEEDS
AMENDMENT


T.M. MASUTHA, MP (ADV)
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES
DATE:




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MINISTER
JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA
Private Bag X 276, Pretoria, 0001, Tel: (012) 408 4669; Fax: (012) 408 4680
Private Bag X 286, Cape Town, 8000, Tel: (021) 467 1700, Fax: (021) 467 1730

Judge President D Mlambo
Gauteng Provincial Division
Private Bag X67
PRETORIA
0001

Dear Judge President Mlambo

**REQUEST IN TERMS OF SECTION 17A OF THE INQUEST ACT 58 OF 1959 TO
APPOINT A JUDGE TO REOPEN THE INQUEST INTO THE DEATH OF AHMED
ESSOP TIMOL:**

JOHANNESBURG INQUEST NUMBER 2361/71

1. Section 17A(1) of the above Act reads that:

"The Minister may, on the recommendation of the attorney-general concerned, at any time after the determination of an inquest and if he deems it necessary in the interest of justice, request a judge president of a provincial division of the Supreme Court of South Africa to reopen that inquest, whereupon the judge thus designated shall reopen such inquest."

2. In reference to the above, I attach hereto a copy of a memorandum received from the National Director of Public Prosecutions ("National Director"), requesting that I invoke the provisions of Section 17A(1) of Act 58 of 1959 in pursuance of reopening the inquest into the death of Mr Ahmed Essop Timol.
3. I have carefully considered the request by the National Director and I am satisfied that the interests of justice would be best served by the reopening of the inquest as contemplated in Section 17A(1).
4. I would be most grateful if you could designate a judge within your division to reopen the inquest into the death of Mr Ahmed Essop Timol.

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5. The National Director will ensure that a prosecutor and all the evidence is made available once a judge has been appointed.

Yours sincerely



T.M. MASUTHA, MP (ADV)
MINISTER OF JUSTICE & CORRECTIONAL SERVICES
DATE: 17/01/2017



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Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

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VGM Building
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0001
Pretoria
South Africa

INTERNAL MEMORANDUM

TO : DR JP PRETORIUS SC
ACTING SPECIAL DIRECTOR OF PUBLIC
PROSECUTIONS: PCLU

FROM : ADV RC MACADAM
SDDPP: PCLU

DATE : 4 FEBRUARY 2016 (Opinion requested on even
date)

SUBJECT : OPINION: REOPENING TIMOL/AGGETT
INQUESTS

REF : 10/3/1/PCLU

Tel: X126431

Dear Torie

1. This opinion is provided arising from a meeting between members of the NPA and Messrs Varney, Dutton and others. An oral presentation was given, motivating the reopening of both inquests.
2. In order to address the request, it is necessary to briefly refer to the relevant provisions of the Inquest Act:
 - 2.1 Section 5 requires that an inquest be held in respect of each natural death where the deceased is suspected of having died of unnatural causes.
 - 2.2 Section 16 requires the inquest Magistrate to make findings as to:
 - 2.2.1 the identity of the deceased
 - 2.2.2 the date and cause of death
 - 2.2.3 whether the death was caused by a criminal act on the part of any person
 - 2.3 Section 17 requires the Magistrate to refer the inquest to the DPP in the event of either not being able to determine the death or in the event of a finding of criminal liability. He is also required to refer the matter to the DPP irrespective of his findings if so requested.

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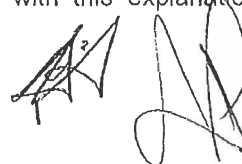
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- 2.4 Section 17(2) empowers the DPP at any time [my emphasis] after receipt of the inquest request the Judicial Officer to reopen the inquest and take further evidence.
- 2.5 Section 17A(1) also empowers the DPP to request the Minister to request the Judge President to appoint a Judge to reopen the inquest.
3. Sections 17(2) and 17A(1) both empower the DPP to cause inquests to be reopened on the basis of further evidence. The sole difference is whether the Minister and the Judge President must be involved and whether the inquest would be reopened by the original Inquest Court or by a Judge appointed by the Judge President. The invocation of section 17A(1) would be a more time-consuming process and would also place a burden on the High Courts which are under pressure with their existing civil and criminal rolls.
4. In my view, it would be appropriate to invoke section 17(2) where the new evidence would lead to certain of the original findings being amended, but would have no other public interest consequences, e.g. a prosecution or in a transparent manner to test the new evidence orally. Section 17A(1) would in my view be appropriate if there was high public interest in the new evidence, but the DPP was of the view that it should first be tested before instituting a prosecution.
5. It has to be stated that if the DPP is of the view that new evidence justifies the institution of a prosecution, then there is no need to first reopen the inquest before instituting the said prosecution.
6. The background to the two cases is as follows:

6.1 Achmed Timol

- 6.1.1 He died in detention in Johannesburg in October 1971 while under interrogation by the Security Branch having been arrested on charges linked to his involvement with the SACP.
- 6.1.2 The then Attorney General declined to prosecute and a formal inquest was held in the Johannesburg Regional Court, which handed down a verdict that he had committed suicide and that the police were not responsible for his death.
- 6.1.3 Shortly after the establishment of the PCLU in 2003, Mr Timol's nephew (a member of the NIA) approached the unit and indicated that he had established that the inquest record and docket were not available. (Governmental archive directives require the destruction of documentation after a certain period.)
- 6.1.4 He however alleged that the daughter of Sergeant Rodriques (who had been alone with the deceased immediately before he fell to his death) had approached Ivor Powell (then a journalist) and informed him that her father had confessed to her that the deceased had been murdered. The NDPP had directed that the DSO must assist the PCLU with the investigation of TRC matters. The DSO reported that the journalist had been interviewed, denied the allegation and produced the newspaper article which he had written, which contained no confession or new evidence. In the circumstances the DSO deemed it inappropriate to approach Rodriques or his daughter. The nephew was satisfied with this explanation and the matter was not taken further.



6.1.5 In late 2015, I however asked the DPCI to register an enquiry due to extensive publicity given to the matter by the media and as a result of statements made by Adv Bizos SC and the family.

6.2 Neil Aggett

6.2.1 Dr Aggett died in police custody in Johannesburg in 1982 after a lengthy period of detention and interrogation by the Security Branch.

6.2.2 The then Attorney General declined to institute a prosecution and a formal inquest was held before a Regional Court Magistrate in Johannesburg. He handed down a verdict to the effect that the deceased had committed suicide and that the police were not responsible.

6.2.3 In 2013, a group of Dr Aggett's friends submitted a petition to the President and Minister of Justice, calling for the prosecution of the police officials responsible for his death.

6.2.4 As a result of this petition, the PCLU requested the DPCI to open an enquiry.

7. The status of the PCLU/DPCI investigations:

7.1 Achmed Timol (I/O Captain Ben Nel)

7.1.1 It has been established that the original inquest and docket are not available.

7.1.2 A copy of the inquest donated by the family attorney to Wits has been downloaded. It is missing 652 pages, which include the evidence and cross-examination of all the police officers involved. However, on the remaining evidence it was possible to establish who the witnesses were and what the issues in dispute were.

7.1.3 Captain Nel has been requested to canvas the availability of all the witnesses, i.e. the police officials, medical doctors and members of the deceased's family.

7.1.4 It has been established that other detainees who were never called as witnesses could possibly shed light on the matter. The first is a Mr Mohammed Essop, who was arrested at the same time as Timol. The second is Quentin Jardine, whose identity, it is alleged, led to the deceased deciding to commit suicide. The third is a Mr Pahad, whom it is alleged was arrested arising from Timol's interrogation. Ms Fullard has been tasked to uplift the detention files from DoJ&CD so that Captain Nel can conduct the necessary investigations in this regard.

7.1.5 It has been established that the TRC appointed a journalist, Piers Pigou, as an investigator and he dealt with the Timol matter. He has indicated that he is available for an interview when he returns to the country. As a matter of interest, it was in fact he who approached Sergeant Rodrigues and not Ivor Powell. His notes reflect that Rodrigues stood by his original statement. It may therefore be that Timol's nephew confused the two journalists and what Rodrigues said.

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- 7.1.6 It has been established that Gordon Winter published a book in which he claimed to have first-hand knowledge of the Timol incident. Ms Fullard has undertaken to establish whether he is alive and where he is residing.
- 7.1.7 A Methodist priest in the UK made public statements to the effect that when Timol's body was viewed in the mortuary, it showed signs of gross mutilations. This claim would have to be followed up although it is in conflict with the evidence of the three doctors who testified at the inquest, including a pathologist, appointed by the family.
- 7.1.8 What also has to be followed up is whether the police, who were involved in the incident, were involved in other cases, which could have a bearing on their version in this matter. It would also have to be established whether there were other incidents involving detainees which would be relevant.

7.2 Neil Aggett (I/O Col Sam Mahlangu)

- 7.2.1 Col Mahlangu indicated that he was unable to locate the original inquest and docket.
- 7.2.2 He however established that a copy of the inquest was available on the Wits website and requested the PCLU to peruse it and to thereafter indicate whether further investigations were required.
- 7.2.3 The record is in the regional of some 8 500 pages and has been uploaded in blocks, which makes online reading time-consuming. Obviously downloading 8 500 pages would place an extreme burden on the office's printing facilities.
- 7.2.4 It has however been established that Adv Bizos SC, who acted for the family, conceded that there was no evidence to justify the conclusion that the deceased had been murdered. (Adv Bizos SC was assisted by a private pathologist and other medical experts.) He however submitted that Whitehead and Cornwright (the two officers responsible for Aggett's interrogation) should be prosecuted for culpable homicide. If the learned advocate is in fact correct, then the crimes prescribed in 2002 and no prosecution is feasible as requested by the deceased's friends.
- 7.2.5 The matter is however complicated by the fact that the former Deputy Judge President of the KZN High Court (Nicholson DJP) has published a book, alleging that the facts of the Aggett matter demonstrate unequivocally the crime of murder by induced suicide. If the learned Judge is correct, then the NPA would still have jurisdiction to prosecute on a charge of murder.
- 7.2.6 It has been established that Goosen, Pollock and Erasmus applied for amnesty on charges relating to breaking into the house of Aggett's parents, looking for evidence to support the claim that he had committed suicide. The TRC material has been uplifted and has been perused.
- 7.2.7 Aggett's detention file was also uplifted, but it contains no relevant information.
- 7.2.8 Deborah Quin was given the list of witnesses, who testified at the inquest and was requested to establish their availability, present whereabouts and

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also whether any of them were connected to other incidents which would be relevant. She is also looking into the issue of whether there were other deaths in detention at the same time, which could be relevant. She has already indicated that Cornwright is deceased and that Auret van Heerden, who was in detention in close proximity to Aggett, is currently in an old age home in the USA.

8. Currently the two matters are not receiving the attention of the PCLU due to firstly, operational constraints which arose since October 2015. (Adv Bukau was given an urgent espionage-related case and uncertainty surrounded Adv Macadam's position due to the NDPP on 8 October 2015, indicating that he had not cancelled his appointment as the OECD Foreign Bribery Prosecutor.) In a meeting with Adv Macadam in September 2015, the NDPP raised the issue as to whether the TRC matters should be taken away from the PCLU. As a result of all these uncertainties, a memorandum was prepared in January 2016, requesting the NDPP to confirm whether the PCLU should continue to deal with TRC cases or whether they should be referred to the DPPs. A response to this memorandum is still outstanding.
9. In my view, a decision on the request made by Messrs Dutton *et al* cannot be taken solely by the NPA.
 - 9.1 Both are the subject of enquiries being conducted by the DPCI and clearly the views of the relevant senior managers within the DPCI should be canvassed.
 - 9.2 In the Aggett matter a group of his former colleagues has formed an association, "Friends of Neil Aggett", which has called for the prosecution of the police officials involved. The request to reopen the inquest runs contrary to the group's position. The group has a direct interest in the matter and its view should be consulted.
 - 9.3 Also in regard to the Aggett matter, although Cornwright is dead, Whitehead is still available and would clearly be affected by the reopening of the inquest. He would be entitled to legal representation, access to relevant material and the right to challenge any new evidence.
 - 9.4 In the Timol matter, it still has to be established whether any of the police involved in his interrogation are still alive and whether any new evidence could result in a prosecution of them on a charge of murder.
10. In my view, it would be inappropriate at this stage to reopen the two inquests. On what has been placed before me it would not appear that Mr Dutton has conducted a comprehensive investigation which would justify all the relevant factors which would have to be taken into consideration by both the NPA and the presiding officers of the inquests.
 - 10.1 The original inquests are not available and consequently the NPA would have to request Wits to make available its originals and to pay for all the relevant copies to be made.
 - 10.2 A decision would have to be taken as to whether to invoke section 17(2), 17A(1), which would require a determination as to whether the witnesses and suspects are available, whether a charge of murder is feasible, whether a *viva voce* hearing, which would involve having to provide the suspects with legal representation, is necessary.
 - 10.3 In my view, a Presiding Officer and the Judge President (if section 17A(1) is invoked) would be reluctant to reopen the inquests, to receive only Dutton's evidence and before the police have concluded their investigations and the NPA decided that there are no prospects of a successful prosecution. This would be particularly apposite in

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the Aggett matter where there are 8 500 pages of evidence to be perused, numerous witnesses who would be required to be recalled and where Whitehead could still be prosecuted.

11. In my view therefore, it would be inappropriate to accede to the request prior to the conclusion of the DPCI investigations and the NPA deciding not to prosecute. I am of the view that even if a decision not to prosecute is taken, then there would be new evidence which would justify the reopening of the inquests. At this stage it is not possible to predict what the consequences of this new evidence would be and therefore it cannot be predicted:

11.1 whether the additional statements should simply be placed before the Regional Court, which could in chambers consider them and elect to amend the original Magistrate's findings

11.2 whether a Judge should be appointed to hear the additional evidence *viva voce*

12. Having said that, it has to be, in the strongest possible terms, stated that it is imperative that the NDPP make a decision as to whether the TRC cases must remain with the PCLU or not. It will serve no purpose to decline the request, but to be placed in the position that two or more years down the line the cases have not been finalised because either the DPCI or NPA or both are unable to commit the necessary resources to finalise the matters timeously. It has to be emphasised that the Aggett matter requires a considerable amount of work due to the volume of evidence to be assessed, which may include an MLA request to the USA to interview Van Heerden. In the Timol matter there are also indications that evidence may be located in the UK, which would also have to be accessed through an MLA process.

13. Currently a member of the PCLU could give almost fulltime attention to the two matters. However, it is only to be anticipated that this will not be the case when shortly the unit's current workload will increase.

14. It is recommended that you:

14.1 advise the NDPP not to accede to the request to reopen the inquests until the investigations have been concluded and a decision taken not to prosecute

14.2 request the NDPP to, as a matter of urgency, make a decision as to whether the TRC matters must remain with the PCLU.

Kind regards

ADV RC MACADAM

