

## BEHIND THE NARRATIVE OF THE ABUSE OF STATE POWER WAS A LARGER GOAL.

By Thabo Mbeki  
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For many years now, some at home and abroad have propagated the view that during the period I was President of the Republic, I abused my power especially to compromise the proper functioning of our criminal justice system, with the objective to advance particular political objectives.

Specifically the charges have been made that I intervened with the relevant state organs in one instance to prohibit the prosecution of the late former National Commissioner of Police, Jackie Selebi, and in another to frustrate the political aspirations of President Jacob Zuma.

At some point, possibly in 2006, the then Scorpions, the Directorate of Special Operations (DSO), decided to carry out some investigations into the South African Police Service (SAPS) arising from the murder of the former businessman, Mr Brett Kebble.

Again at some point during these investigations, the then National Director of Public Prosecutions (NDPP), Adv Vusi Pikoli, and the Head of the Scorpions, Adv Leonard McCarthy, informed me about their investigations. They reported that they were not receiving any cooperation from the SAPS in terms of accessing documents in the possession of the latter.

In this context it is necessary to explain that by this time the relations between the NPA/NDPP/DSO and the SAPS had to all intents and purposes broken down, with these institutions treating one another as deadly enemies.

Naturally, despite this reality, I viewed it as my obligation as Head of State and Government to support and assist all state organs properly to discharge their Constitutional and Statutory responsibilities.

Accordingly I informed Advocates Pikoli and McCarthy that I would intervene with National Commissioner Selebi to ensure that the SAPS did not obstruct the NDPP and the DSO in their work.

One result of this undertaking was that I convened a meeting at the offices of the SAPS Crime Intelligence Division. Present at the meeting were National Commissioner Selebi, Head of SAPS Crime Intelligence, Commissioner Ray Lalla, NDPP Pikoli, DSO Head McCarthy, the Presidency DG, Rev Frank Chikane, and myself.

Having discussed the urgent matter which had been raised by the DSO, it was agreed that the latter could send its officers to examine the Crime Intelligence files at Crime Intelligence Headquarters, without taking these files out of the building or photocopying them.

Everybody understood the need to proceed in this manner, which was necessitated by the sensitive and confidential nature of these files, which included the names of the agents and sources of Crime Intelligence.

More generally, it was also agreed that thenceforth the SAPS would cooperate with the NDPP and the DSO in their investigations.

At my suggestion, it was accepted that in the event that further problems arose in this regard, either or both parties would contact DG Chikane who would help to resolve any dispute, or, failing which, he would refer the matter to the President.

During September 2007 DG Chikane and I met NDPP Pikoli at his request. He informed us that he had secured Warrants to conduct search and seizure operations at the SAPS Headquarters and National Commissioner Selebi's home, and to charge and arrest the National Commissioner.

This information about the securing of Warrants took both DG Chikane and I by surprise. We informed NDPP Pikoli that, as he knew, he had no need for such Warrants as I, as President, remained ready to assist the NDPP/DSO with regard to the SAPS, as we had already done.

We argued with NDPP Pikoli that given the deeply poisoned relations between the NDPP/DSO and the SAPS, any attempt to execute the Warrants would inevitably result in a violent, armed conflict between his DSO search and arrest party and the SAPS.

He conceded that this was possible, reminding us that indeed such a violent conflict nearly broke out when his DSO officers had earlier sought to search Jacob Zuma's house at his residence in Forest Town in Johannesburg.

Nevertheless and despite this concession, he insisted that as the NDPP, he had a legal right to conduct the search and seizure and arrest operations for which he had legal Warrants, and would do this in a week's time.

We pointed out that any shooting war as would almost inevitably occur between the State organs the DSO and the SAPS would present the country with a very serious threat to its national security.

I also tried to convince Adv Pikoli to understand that it was my absolute responsibility as President of the Republic to take all necessary measures to avoid this eventuality.

I therefore proposed to NDPP Pikoli that he should carry out his search and seizure and arrest operations after two, rather than one week, as well as abandon his reliance on the use of unnecessary and provocative Warrants.

The two weeks would give me time to interact with National Commissioner Selebi and the SAPS leadership, as well as take other such steps as would ensure that the NDPP/DSO discharged their own tasks without plunging the country into a very serious national security crisis.

The work I would do would ensure the full cooperation of the National Commissioner and the SAPS, with no need for any Warrants to be served on them. I must also add that on that day, I was due to leave the country for the United States to attend the annual session of the United Nations General Assembly and would therefore be absent from South Africa for at least half of that week.

NDPP Pikoli resolutely rejected this proposal and refused all persuasion, insisting that he had a legal right and duty to execute the Warrants in the one week he had indicated.

I then informed NDPP Pikoli that, as President, I had my own solemn duty to help guarantee the country's national security, while doing everything possible to assist the NDPP/DSO to carry out their legal duties, including the arrest and prosecution of the SAPS National Commissioner as they had deemed this to be required and merited.

After a lengthy discussion, I therefore told Adv Pikoli that given the fact of his absolute refusal to postpone by just one more week the actions he intended to take against the National Commissioner and the SAPS, the only recourse I had to stop him from acting in a manner that would surely threaten national security was to suspend him from his post as NDPP.

As we were meeting at Mahlamba Ndlopfu, I then left Adv Pikoli with Rev Chikane in the room where we were meeting and went to my office in the house, prepared and signed my letter suspending NDPP Pikoli and gave it to him there and then.

Interestingly, he said that he was relieved as the suspension had 'taken a great load off his shoulders'.

Despite the pain of all these proceedings, we parted in the middle of the night with no evident bad feelings among us.

When Adv Mokotedi Mpshe took over as Acting NDPP, he did not adopt the position of his predecessor of insisting on serving the Warrants within one week.

We therefore carried out the necessary processes we had offered to Adv Pikoli and engaged National Commissioner Selebi and the SAPS leadership.

Consequently the NDPP/DSO carried out their work without any hindrance, and with no threat to national security. This included the arrest and prosecution of National Commissioner Selebi. During the discussions with Adv Pikoli at Mahlamba Ndlopfu we had sharply disagreed with him about his decision to enter into plea bargains with people who had been involved in the murder of Brett Kebble.

In this regard we argued, in vain, that the NPA should prosecute these in the same way as it intended to prosecute the National Commissioner. This matter of plea bargains and their timing was linked to Adv Pikoli's insistence to act on his Warrants in one week.

According to the plea bargains, the NPA absolved from prosecution the confessed Brett Kebble murderers, Mikey Schultz, Nigel McGurk and Kappie Smith, turning them into State witnesses against Glenn Agliotti.

The NPA also made a deal with the drug trafficker, Agliotti, which conditionally indemnified him from prosecution on charges including corruption, money laundering, racketeering and defeating the ends of justice, if he testified "frankly and honestly" against National Commissioner Selebi.

In his book, "My Second Initiation", Adv Pikoli says: "I accept that the greatest criticism of my tenure is that I allowed Kebble's killers to go free, but what could possibly be worse than a National Police Commissioner who is a criminal himself: guilty of corruption and of protecting criminals? We would never have been able to solve the Kebble murder were it not for those deals... I don't think it's fair to say we 'prioritised' the Selebi case over that of the Kebble murder... We never envisaged that Glenn Agliotti would walk free. We also intended to prosecute Agliotti, along with John Stratton, and we believed both would have stood trial together for the death of Kebble."

However, long after National Commissioner Selebi had been convicted, Glenn Agliotti did walk free, and John Stratton lives in Australia.

After the Kebble murder charges against him were withdrawn, Agliotti publicly invited the NPA to prosecute him for having "corrupted" National Commissioner Selebi, and said, "I don't believe he (Selebi) was handled in the right manner. There was a conspiracy. It was an absolute travesty of justice."

The NPA itself announced that it would conduct its own internal investigation into the circumstances surrounding the arrest, prosecution and conviction of the late National Commissioner Selebi. The NPA has as yet made no announcement about the outcome of this internal investigation.

After Adv Pikoli's suspension, and as prescribed by the law, we instituted a Commission of Enquiry to determine whether Adv Pikoli was 'fit and proper' to occupy the position of NDPP. We appointed the former Speaker of the National Assembly, Ms Frene Ginwala, to serve as the Commissioner.

In her Report Commissioner Ginwala made many important observations relevant to various matters raised in this article.

Among others she said:

"Since he was dealing with the impending prosecution of a state official as senior as the National Commissioner of Police, Adv Pikoli was obliged to keep the Minister (of Justice) informed at all times in order to enable her to exercise her final responsibility, and also to report to the President and to Cabinet on a matter that could impact on national security. This duty would specifically include informing the Minister prior to applying for warrants of arrest and search and seizure against the National Commissioner of Police. Adv Pikoli failed in his duty to keep the Minister informed."

Further she stated:

"I did not find any substance in Adv Pikoli's assertion that the reason for his suspension was to stop the prosecution of the National Commissioner of Police. Adv Pikoli confirms in his evidence that he received assistance from the Presidency and the Minister in his investigation of the National Commissioner of Police, and that there had not been any earlier attempts to stop him proceeding."

She also said:

"Even more disturbing was Adv Pikoli's response to the question on whether he would have acquiesced to the request if the President had insisted on a two week delay.

"Adv. Pikoli said: "I am saying I am very reluctant to answer this question, but if I have to answer it, I must say that perhaps I might have defied the President but I was just hoping that such a thing would never happen."

"This is most startling, particularly if he would have still been in a position to execute the warrants after the two weeks."

Again basing herself on evidence presented to the Commission,

Ms Ginwala also stated that:

"(Adv Pikoli) did not take seriously the President's concerns about the mood of the SAPS and their possible reaction to the arrest of the National Commissioner; and even challenged the President's assessment of the time he would require to manage the situation... Adv Pikoli did not appreciate that the President would need to obtain comprehensive assessments of the possible adverse reaction by members of SAPS and the potential threat to the stability of the country, as well as to determine what measures needed to be put in place to contain the situation...Adv Pikoli also did not give due consideration to the actions the President might need to take in order to defuse a potential security crisis and instability and to preserve the country's international reputation."

"The Head of State is inevitably privy to information that is not available to others, and it was incumbent on Adv Pikoli to respect the President's assessment of the time that would be necessary; the more so as Adv Pikoli admitted that the request did not undermine his prosecutorial independence in any way....

"His (Adv Pikoli's) judgment that the two weeks delay would have compromised the matters that were pending is not supported, even by the historical events. Those matters were ultimately addressed in court in November 2007 well beyond the two weeks period the President had requested...Had these facts been presented as the reason for the suspension, when the conduct would have held a real risk of undermining national security, I would not have hesitated to find the reason to be legitimate."

Contrary to the blatantly false allegation that was made and has been sustained for many years, we never intervened to block the investigation, arrest and prosecution of the late National Commissioner of SAPS, Jackie Selebi. Instead we acted at all times to assist the NPA and the DSO to do their work, as determined and defined solely by them.

For those who have argued otherwise, with no facts to substantiate their positions, the real and fundamental matter at issue was not about the legitimate functioning of the criminal justice system, protected from illegal interference and abuse of power by the President, with the intension to shield the then National Commissioner Selebi from arrest and prosecution.

The real matter was about creating a particular political climate intended to discredit the Government of the day.

The purpose of this was to gain advantage by promoting the particular partisan political objective of convincing the people of South Africa that the President and the Government were determined to subvert our Constitution and democracy, with the aim to advance the interests of the ANC rather than those of the country and our people as a whole.