

**IN THE HIGH COURT OF SOUTH AFRICA  
(TRANSVAAL PROVINCIAL DIVISION)**

**CASE NO:**

In the matter between:

**THE STATE**

and

**1. JOHANNES VELDE VAN DER MERWE**

an adult male South African citizen

**2. ADRIAAN JOHANNES VLOK**

an adult male South African citizen

**3. CHRISTOFFEL LODEWIKUS SMITH**

an adult male South African citizen

**4. GERT JACOBUS LOUIS HOSEA OTTO**

an adult male South African citizen AND

**5. HERMANUS JOHANNES VAN STADEN**

an adult male South African citizen

(hereafter referred to as the accused)

**PLEA AND SENTENCING AGREEMENT IN TERMS OF  
SECTION 105A OF ACT 51 OF 1977 (AS AMENDED)**

**THE PLEA AGREEMENT:****A. PARTIES TO THE AGREEMENT:**

1. The State is the National Prosecuting Authority of South Africa and represents the complainant.
2. There are five accused, namely:

**JOHANNES VELDE VAN DER MERWE**

**ADRIAAN JOHANNES VLOK**

**CHRISTOFFEL LODEWIKUS SMITH**

**GERT JACOBUS LOUIS HOSEA OTTO and**

**HERMANUS JOHANNES VAN STADEN;**

**B. AUTHORISATION:**

3. The prosecutor who represents the Prosecuting Authority in this matter is **Adv AR Ackermann SC**, a Special Director in the Priority Crimes Litigation Unit in the Office of the National Prosecuting Authority, who is duly authorised to enter into this plea agreement on behalf of the State. The relevant authorisation is attached as **Annexure A**.

**C. LEGAL REPRESENTATION:**

4. At all times during the plea negotiations and these proceedings, the accused have been represented by **Adv Johann Engelbrecht SC** and **Jan Wagener**, of Attorneys Wagener Muller, 833 Church Street, Pretoria, 0001.

**D. THE INVESTIGATING OFFICER:**

5. The investigating officer was consulted regarding this plea agreement and has indicated that he has no objection to the pleas of guilty as set out in the agreement, or to the proposed sentences.

**E. THE COMPLAINANT'S ATTITUDE WITH REGARD TO THE PLEA AGREEMENT:**

6. The complainant, the **Reverend Frank Chikane**, has been consulted and has indicated that:
  - 6.1 He does not harbour a grudge against the accused.
  - 6.2 It is extremely important for him to have the true facts surrounding the attempt on his life disclosed.
  - 6.3 He is satisfied with the plea agreement and does not wish to make any further representations in connection with the matter.

**F. THE RIGHTS OF THE ACCUSED:**

7. Prior to entering into the plea agreement, the accused were duly informed about their constitutional rights..
8. They have been fully informed regarding the rebuttable presumption that they are innocent until guilt has been proved beyond reasonable doubt.
9. They were informed of their right to remain silent.
10. They were also fully informed of their right not to offer self-incriminating testimony.
11. The accused are fully aware of the fact that the Honourable Court is not bound by this plea agreement.

**G. THE CHARGES:**

12. The accused are charged with the following offences:

**COUNT 1: ATTEMPTED MURDER**

IN THAT on or about **23 April 1989** and at or in the vicinity of the then **Jan Smuts Airport** in the district of **Kempton Park**, the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the **Reverend Frank Chikane**, an adult male person, by way of **administering a poison, to wit Paraoxon, to his clothing.**

**ALTERNATIVE CHARGE TO COUNT 1: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956**

IN THAT the accused, together with **Wouter Basson, André Immelman and persons unknown to the State, during April 1989** and at or near **Roodeplaas Research Laboratory and/or Pretoria** in the district of **Pretoria**, unlawfully and intentionally conspired to commit the crime of **murder** against the **Reverend Frank Chikane**, and / or to assist in the commission of this offence and / or to further the commission of the offence.

**COUNT 2: CONTRAVENTION OF SECTION 18(2)(a) OF THE RIOTOUS ASSEMBLIES ACT, NO 17 OF 1956**

IN THAT the accused, **Wouter Basson, André Immelman and persons unknown to the State, during 1989** and at or near **Roodeplaas Research Laboratory, Security Branch Headquarters** in the district of **Pretoria** and/or **other locations unknown to the State**, unlawfully and intentionally conspired to commit the crime of **murder of persons unknown to the State** and / or to assist with the commission of such murders and / or to further the commission of such murders.

**H. THE PLEA OF THE ACCUSED:**

13. The parties to this plea agreement have concurred on the following:

13.1 That all the accused plead guilty to **Count 1**, as set out in the indictment:

**COUNT 1: ATTEMPTED MURDER**

IN THAT on or about **23 April 1989** and at or in the vicinity of the then **Jan Smuts Airport** in the district of **Kempton Park**, the accused unlawfully and intentionally, and in furtherance of a common purpose, attempted to murder the **Reverend Frank Chikane**, an adult male person, by way of **administering a poison, to wit Paraoxon, to his clothing.**

13.2 That the State will withdraw **Count 2** against all the accused.

## 1. FACTUAL SUMMARY OF EVENTS:

### (i) BACKGROUND:

(For the sole and exclusive purpose of this agreement, the accused admit the contents of paragraphs 14 to 23 as set out hereunder, although at the time the relevant offence referred to in **Count 1** was committed, they had no knowledge whatsoever thereof.)

14. During the period 1982 – 1992, the South African Defence Force ran a Top Secret project, namely Project Coast. The primary objective of this project was to develop a defensive and limited offensive chemical and biological warfare capacity.
15. Dr Wouter Basson was the project officer.
16. Due to the sensitivity of the project, front companies were used to conduct research as well as to manufacture and procure substances.
17. The front company Delta G Scientific (Pty) Ltd (hereafter referred to as "Delta G") was responsible for research and manufacture of chemical substances for the project.
18. Roodeplaat Research Laboratory (Pry) Ltd (hereafter referred to as "Roodeplaat") conducted research in the biological sphere and to a lesser extent, also carried out chemical research.
19. Dr A Immelman was a scientist employed as the head of toxicological research at Roodeplaat.
20. Around the mid-1980s, Dr Basson instructed Dr Immelman to, *inter alia*, carry out research on the use of toxic substances against individuals, methods of application and the traceability of such substances following administration. These toxic substances (including Paraoxon) were manufactured at Roodeplaat and some of them were handed over to Dr Basson.
21. In approximately 1987, Dr Basson ordered Dr Immelman to meet clandestinely with representatives of other branches of the Security Forces and to supply them with whatever substances they needed.
22. As a result of this instruction, Dr Immelman had various clandestine meetings with members of the various Security Force components. During these meetings, the needs of particular components were discussed and toxic substances were in fact later supplied to them.
23. In order to keep a record of the toxic substances that were handed over to these outsiders, Dr Immelman maintained a list (attached to the indictment

as Annexure "A") indicating the date of delivery, the name of the substance and the volume / quantity supplied.

**(ii) THE ACCUSED:**

24. During the period January 1986 to September 1988, accused No 1 was the commanding officer of the SA Police Special Branch. In October 1988, he was promoted to Deputy Commissioner of Police.
25. General Sebastiaan Smit succeeded him as commander of the Security Police and thereafter, accused No 1 had no further involvement with the project.
26. During the period December 1986 to August 1991, accused No 2 was the Minister of Law and Order in the Republic of South Africa.
27. During the period relevant to the indictment, accused 3 to 5 served as police officers attached to the Security Branch.

**(iii) THE VICTIM:**

28. The Reverend Frank Chikane was an outspoken opponent of apartheid and the policies of the then lawfully elected government. He was, *inter alia*, the secretary-general of the South African Council of Churches and the vice president of the United Democratic Front. It was the stated policy of the latter organisation to propagate and support countrywide unrest and violence for the direct purpose of rendering the country ungovernable.
29. During April / May 1989, Reverend Chikane was planning to visit various foreign countries with a view to propagating the imposition of economic sanctions against South Africa.
30. The first leg of his trip was a visit to South West Africa, now Namibia. He travelled by air from the former Jan Smuts Airport to Windhoek.
31. After dressing on 24 April 1989 in some of the clothes that had been packed in his suitcase, the Reverend Chikane took ill. He was admitted to a hospital in Namibia, but later the same day, he was transported back to South Africa as a matter of urgency and re-hospitalised on arrival.
32. His condition improved and he was discharged from hospital. He then flew to the USA, both to recuperate and to keep a number of scheduled appointments. Additional clothing was packed in his suitcase, which had arrived from Namibia in the interim.

33. In the United States, Reverend Chikane again fell ill after wearing clothing taken from his suitcase. Again, after being hospitalised, his condition improved. This pattern was repeated twice more.
34. During his third hospitalisation in the USA, extensive medical tests were carried out on Reverend Chikane. P-Nitrophenol was found in his urine and this, together with specific symptoms and other test results, indicated organophosphate poisoning. P-Nitrophenol is a rapidly biodegradable metabolite of Parathion, of which Paraoxon is the active ingredient.

**(iv) THE CRIME:**

35. During the 1980s, various individuals / organisations were actively involved in efforts to abolish apartheid in South Africa and/or overthrow the government of the day by violent means. Methods used included the promotion of economic sanctions against and the international isolation of South Africa, as well as direct propagation of civil disobedience in order to render the country ungovernable.
36. During 1987, at a meeting arranged by the South African Defence Force, accused No 1 took cognisance of an order to act against high profile members of the anti-apartheid liberation struggle in order to neutralise their influence. He also took note that, in extreme cases and only as a last resort, consideration could be given to killing them.
37. A list containing the names of persons identified in terms of this order was handed to senior members of the security establishment, including accused No 1. Reverend Chikane's name was among those on this list.
38. The execution of the above-mentioned order was discussed by accused No 1 and No 2.
39. Accused No 1 and No 2 then decided that a special unit should be set up within the Security Branch for the purpose of carrying out this order.
40. Accused No 4 and No 5 were attached to this special unit at all relevant times and from January 1989, accused No 3 served as the commander of the unit.
41. After General Smit assumed command of the Security Branch, he was informed about the objectives of the special unit.
42. Acting on the orders of General Smit, accused No 3 made contact with Dr Basson and requested him to assist the special unit in acquiring substances that could be applied against the enemy. Dr Basson arranged for contact to be made with Dr Immelman.

43. A number of clandestine meetings took place thereafter between Dr Immelman and accused No 3, 4 and 5. At these meetings, these three accused discussed the details of substances that could be used against the enemy. In respect of Reverend Chikane, a substance that would specifically lead to his death was required. Dr Immelman identified a certain substance for this purpose and explained that it should be applied to close-fitting clothing items, such as a shirt collar and/or underpants. The toxic substance, which was subsequently identified as Paraoxon, was supplied to them by Dr Immelman.
44. Paraoxon is a lethal toxic substance.
45. On 4 April 1989, Dr Immelman delivered the Paraoxon to the accused, as reflected in **Annexure "A" of the Indictment.**
46. Reverend Chikane was due to depart for Windhoek from Jan Smuts Airport on 23 April 1989.
47. On the evening of 23 April 1989, accused No 3 and No 4 were at the airport and Reverend Chikane's suitcase was intercepted. They then applied the Paraoxon supplied to them by Dr Immelman, to the contents of Reverend Chikane's suitcase.
48. The poisoning of Reverend Chikane's clothing resulted in the series of events set out in paragraphs 31-34.
49. The order to kill Reverend Chikane was issued by General Smit to accused No 3 in terms of an order conveyed to accused No 1 and No 2. The accused acted in pursuance of a common purpose to murder Reverend Chikane. At all relevant times, the accused acted unlawfully and with the necessary intent.

#### **AGREEMENT REGARDING A JUST SENTENCE:**

##### **J. AGGRAVATING CIRCUMSTANCES:**

50. The administration of poison in order to secretly eliminate opponents is an egregious, reprehensible and universally abhorrent act.
51. Accused No 1 was the Deputy Chief of the Republic of South Africa's Police at the time of commission of this crime.
52. Accused No 2 was a prominent political leader and member of the ruling party of the day.
53. Reverend Chikane was a religious leader.

54. The motive for the planned murder of Reverend Chikane was to prevent him from lobbying abroad for economic sanctions against South Africa and to deprive him of his role in promoting internal resistance against the government.
55. The **Promotion of National Unity and Reconciliation Act, No 34 of 1995**, made provision for persons who were guilty of committing gross human rights violations for political purposes, to apply for amnesty.
56. On several occasions, accused No 1 and 2 availed themselves of this right and testified before the Truth and Reconciliation Committee, each time under oath.
57. The accused did not apply for amnesty in respect of the charge to which they have now pleaded guilty.
58. On 10 July 1997, accused No 1 testified before the TRC that he was not aware of the existence of a so-called "internal hit list" that was circulated within the security community.
59. Acts of reconciliation towards Reverend Chikane by accused No 2 took place only after the National Prosecuting Authority had indicated that it had a *prima facie* case against accused No 3, 4 and 5 in respect of the poisoning of Reverend Chikane.
60. During the trial of Dr Wouter Basson, who was charged, *inter alia*, with the poisoning of Reverend Chikane, the accused, and in particular accused No 2, remained silent about their role in the attempted murder and avoided any suggestion of attempted reconciliation.
61. During the prosecution of Dr Basson, accused No 3, 4 and 5 were approached on several occasions by members of the prosecution team with a view to giving evidence as State witnesses. They were offered indemnity from prosecution in terms of Section 204 of Act 51 of 1977 in this regard. The accused consistently refused to offer their cooperation and persisted in furnishing the State with a false version of events. The accused offered instead to cooperate with Dr Basson's legal defence team.
62. After conclusion of Dr Basson's trial, Reverend Chikane wrote to accused No 3, 4 and 5 several times, pleading with them to reconcile with him. The accused consistently ignored all his requests.

**K. MITIGATING CIRCUMSTANCES:**

63. None of the accused has any previous convictions. Their respective ages are 71 (accused No 1), 70 (accused No 2), 69 (accused No 3), 60 (accused No 4) and 63 (accused No 5).
64. The accused are all married.
65. The accused have all pleaded guilty.
66. Disposal of this case in terms of Section 105A of Act 51 of 1977 saves both the court and the State the cost and inconvenience of a protracted trial.
67. The accused have assisted the State by pleading guilty, in so far as it would otherwise have been difficult for the State to prove its case, since the State is not in possession of any evidence regarding the involvement of accused No 1 and No 2 and has been able to establish their role only as the result of their cooperation. In addition, accused No 3 and No 4 came forward to disclose their roles.
68. The accused have shown remorse for their deeds and have undertaken to act as State witnesses in the event of a prosecution being instituted against General Sebastiaan Smit.
69. Accused No 2 publicly washed Reverend Chikane's feet as a gesture of reconciliation. This act of contrition must be seen against the background that it was performed voluntarily by accused No 2.
70. The sincere remorse of accused No 2 in regard to past deeds is further illustrated by his act of reconciliation towards the mothers of 9 of the 10 Nietverdiend victims killed by the Security Forces, despite the fact that accused No 2 had no knowledge of this operation at the time and nor was it sanctioned by him.
71. At all relevant times, the accused were acting by virtue of their official positions and posts, in defence of the lawfully elected government of the day, to which they had sworn an oath of allegiance.
72. The offence was committed during a period of intense conflict and division between the various communities and structures in South Africa. On the one hand, the ANC and other anti-apartheid organisations that wished to overthrow the government by violent means, had thrown everything into the struggle to achieve their objectives. All members and spheres of society were drawn into the struggle in order to foment resistance in a variety of forms. On the other hand, the then lawfully elected government, in turn, used all the methods and powers at its disposal. The Security Forces, and in particular the SA Police, played a key role in combating the onslaught. Amid the violence raging countrywide as well as in Namibia, the SA Police were increasingly required to act against trained military operatives, which had a significant influence on normal policing. At times,

they were forced to sacrifice the principle of minimum force and, amid the violence and bloodletting, the distinction between lawful and unlawful action became blurred.

73. At the time of commission of the offence outlined in Count 1, accused No 1 was no longer head of the Security Police and was also no longer involved in the project.
74. Neither accused No 1 nor No 2 had knowledge of the specific attempt on Reverend Chikane's life. Notwithstanding the fact that accused No 2 had made it clear that he wished to be informed in advance if consideration was being given to killing a specific individual, he was not informed in this particular case.
75. Accused No 3 and No 4 were subordinates who acted in terms of a direct order issued by the Security Branch chief, General Smit.
76. The original project aimed at neutralising the influence of high profile members of the anti-apartheid liberation struggle, was not initiated by the accused, but by the SA Defence Force, which itself was acting on higher authority.
77. As secretary-general of the South African Council of Churches and vice president of the United Democratic Front, Reverend Chikane played a key role in fomenting resistance to the former government. The United Democratic Front succeeded in mobilising the masses countrywide, resulting in widespread unrest and violence.
78. In the run-up to the TRC process, accused No 1 did everything possible to encourage members and former members of the SA Police to participate in the process. When the incident involving Reverend Chikane came to his notice, he held discussions with former chiefs and generals of the SA Defence Force in an attempt to persuade them to take part in the process as well. Because members of the defence force were involved in the incident, any attempt to seek amnesty would necessarily have been unsuccessful without their cooperation. The military generals were of the opinion, however, that the **Promotion of National Unity and Reconciliation Act, No 34 of 1995**, contained one-sided provisions that rendered the process unacceptable to them.
79. After conclusion of the TRC process, accused No 1 and No 2 did everything they could to promote creation of a further process that could address shortcomings exposed by the TRC process. Following the decision to prosecute accused No 3, 4 and 5, accused No 1 and No 2 also held discussions with Reverend Chikane with a view to the institution of such a process. He showed empathy for the problems with which accused No 1 and No 2 were wrestling.

80. With the formulation of the National Prosecuting Authority's prosecutorial guidelines entitled "*Prosecuting policy and directives relating to the prosecution of offences emanating from conflicts of the past and which were committed on or before 11 May 1994*" (see Annexure "B"), a process was created that offered built-in protection for individuals who wished to make use of it, and the accused lost no time in coming forward and making full disclosure regarding this incident, which they had not been able to do in response to the letters from Reverend Chikane referred to in paragraph 62 above.

**L. SENTENCE AGREEMENT:**

81. In the light of the circumstances set out above, agreement has been reached on the following as appropriate sentences in respect of count 1:

**Accused No 1 and No 2:**

Each of the accused is sentenced as follows:

"10 (ten) years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

**Accused No 3, 4 and 5:**

Each accused is sentenced as follows:

"5 (five) years' imprisonment, wholly suspended for 5 (five) years on condition that the accused are not convicted of a crime in which assault or the administration of poison or other hazardous substances form an element, or of conspiracy to commit such a crime, committed during the period of suspension and in respect of which a sentence of imprisonment without the option of a fine is imposed."

SIGNED AT PRETORIA ON THIS DAY OF JUNE 2007.

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AR ACKERMANN SC  
Director of Public Prosecutions  
Priority Crime Litigation Unit.

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1. JOHANNES VELDE VAN DER MERWE

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2. ADRIAAN JOHANNES VLOK

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3. CHRISTOFFEL LODEWIKUS SMITH

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4. GERT JACOBUS LOUIS HOSEA OTTO

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5. HERMANUS JOHANNES VAN STADEN

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JAN WAGENER  
ATTORNEY FOR THE ACCUSED  
WAGENER MULLER  
833 CHURCH STREET  
ARCADIA, PRETORIA  
TEL: (012) 342-3525  
DOCEX 321 PRETORIA  
REF: JW0423