

Profile of PCLU Cases

(i) Nuclear Non-Proliferation

➤ *The State v Asher Karni*

The PCLU managed an SAPS investigation into a Cape Town business implicated in the import and export of triggers for nuclear devices. This led to the arrest of the business owner in the United States. In 2005, he pleaded guilty in the US Federal Court and was sentenced to a period of imprisonment.

➤ *The State v Geiges & Wisser*

The PCLU was instrumental in the exposure of South African businesses involved in the supply of components for a nuclear weapons-grade uranium enrichment plant to Libya. The PCLU managed and directed an SAPS investigation that led to the arrest and prosecution of the directors of Krisch Engineering (Pty) Ltd after the investigation established their links to an international syndicate operating in the Far East, Middle East and Europe.

The accused appeared in the Pretoria High Court in May 2005 and a provisional indictment was served on them. The final indictment was served on the accused in April 2006 and the matter adjourned for trial to 5 March 2007.

(ii) Foreign Military Assistance

➤ In response to the arrest of South African citizens in Zimbabwe and Equatorial Guinea, the PCLU managed and directed an investigation into the involvement of other role players. This led to the arrest of three South African citizens and a UK citizen (Mark Thatcher). All four pleaded guilty in terms of section 105A of the Criminal Procedure Act.

➤ Following the release of the South African citizens detained in Zimbabwe in connection with the *coup* in Equatorial Guinea, eleven of them were arrested in South Africa and charged with contravention of section 3(b) of the Regulation of Foreign Military Assistance Act, No 15 of 1988. Two of the said accused pleaded guilty and were sentenced. The trial of the remaining nine accused is due to proceed in February 2007. It is anticipated that the outstanding

prosecutions relating to the Equatorial Guinea attempted *coup d'etat* will be finalized in 2007.

- A matter of concern to Government was the participation of South African citizens acting as security guards in the conflict in Iraq. A number of enquiries conducted by SAPS were evaluated by the PCLU, but it was found that such conduct did not fall within the ambit of the existing FMA legislation. The PCLU prepared a detailed opinion recommending an amendment of the Act, which was submitted to all relevant role players.
- Government accepted the need to amend the Foreign Military Assistance legislation in order to take effective action in Iraq. A revised Act was placed before the Defence Portfolio Committee. However, the Minister of Defence recognized that the Act still contained several shortcomings.
- It is hoped that the revised legislation will shortly come into effect, since the PCLU would like to address Government's concerns relating to the number of South Africans performing security services in Iraq.

(iii) TRC Prosecutions

- The PCLU conducted an audit of around 300 cases which had been submitted by the DSO, DPP's and SAPS in 1999 in terms of a direction by the then NDPP. 167 of these cases were finalized on the basis that no prosecutions could be instituted.
- Prosecutions were instituted in the *S v Terre'blanche*, *S v Blani*, *S v Nieuwoudt & 2 Others*. The first two matters were finalized with pleas of guilty in terms of section 105A of Act 51 of 1977. The last matter is still outstanding pending a review of the refusal of amnesty of the accused by the Amnesty Committee of the TRC. An Amnesty Committee was reconvened to re-hear the amnesty applications in the *Motherwell* bombing incident.
- Further prosecutions were put on hold in late 2004 pending the formalization of guidelines. The guidelines have now been approved and therefore the final disposal of TRC prosecutions has been identified as a major priority. As a result of various representations received, the PCLU has identified five cases, which potentially can be prosecuted, as well as approximately 10 other cases warranting investigation. The following steps must be taken:

- (i) The representatives of the State departments which are required to assist the PCLU in the execution of its duties must be identified and involve themselves in the process;
- (ii) The issue of the investigations must be resolved with SAPS and the DSO and thereafter the necessary investigations completed;
- (iii) The close involvement of the process by Justice is necessary in cases where prosecutions are instituted where amnesty was refused, since the applicants may take the validity of the refusal to grant amnesty on review to the High Court;