

To the Judge President of the Constitutional Court
of the Republic of South Africa
Honourable Judge President Mogoeng-Mogoeng

19 April 2017

PETITION TO STOP OUR ILLEGAL INCARCERATION

PRAYER: To rule *ex parte* that the Legal Aid Board of South Africa must forthwith appoint Prof H Booysen and Mr Julian Knight as the Applicants' legal representatives, respectively as advocate and lawyer, in order for them to launch an application on behalf of the Applicants, in accordance with sec. 38 of the Constitution of South Africa of 1996, before the Constitutional Court to contest the constitutionality of the Applicants' incarceration.

1.

- 1.1. The Applicants are respectively Dr Johan (Lets) Pretorius, ID number 460327 5119 086, hereafter called Applicant 1, Dr Johan Pretorius, ID number 711013 5036 085, hereafter called Applicant 2, Dr Wilhelm Pretorius, ID number 770820 5027 080, hereafter called Applicant 3.
- 1.2. Applicant 1 is the father of the two brothers, Applicant 2 and 3.
- 1.3. Applicants 1 and 2 are medical practitioners and Applicant 3 is a reverend.
- 1.4. Applicant 1 has been arrested on 13 September 2002. He has been held in custody till he received bail on 25 March 2004. He has been on bail under the most severe bail conditions. He could not continue with his life, since he had to be in court almost daily (more than 1 200 appearances), except during

the court recesses. He could not continue a practice in Potgietersrus or open a practice in Pretoria and practiced medicine by assisting other doctors when the court was not in session.

1.5. Applicant 2 was arrested on 11 December 2002 and Applicant 3 on 10 December 2002. Both have been in custody since.

1.6. The trial commenced on 19 May 2003 and lasted for more than 11 years, until sentencing on 28 October 2013. They were sentenced for High Treason against the Republic of South Africa. Applicants 2 and 3 were also sentenced for culpable homicide and conspiracy to commit a crime.

1.7. After the 11 year main trial, they were sentenced (the 11 years in custody not included) as follow :

1.7.1. Applicant 1: 30 years of which 10 years are suspended for 5 years.

1.7.2. Applicants 2 and 3:

1.7.2.1. 35 years of which 10 years are suspended for 5 years

1.7.2.2. 5 years for culpable homicide

1.7.2.3. 8 years for conspiracy or attempt to commit a crime.

1.8. They have been incarcerated since 28 October 2013 as time served, without allowing for and taking into account of the time incarcerated before sentencing. They are currently held captive in Zonderwater Correctional Centre, Cullinan.

2. No means to attain private legal representative

3.

- 3.1. During these 15 years, Applicants 2 and 3 had no income while incarcerated and are completely financially ruined.
- 3.2. Applicant 1 had limited opportunity procuring an income during his 9 years of bail, but has already been 4 years incarcerated as convicted inmate without any income.
- 3.3. The Applicants finances are completely depleted due to the circumstances they were placed by the State. They have no means to afford their own legal representatives to launch an application on behalf of them in the Constitutional Court.
- 3.4. They are completely dependent on the Legal Aid Board for the attainment of legal representation to launch such an application as is envisioned in the prayer.

4. No means to prepare for launching an application

- 4.1. The Applicants are not qualified jurists. They are medical practitioners and a theologian.
- 4.2. Due to the circumstances of incarceration, they have no access to any judicial literature or court decisions.
- 4.3. They only have limited access to their computers.

- 4.4. They are in no position to prepare or launch an application to the Constitutional Court, neither do they have the means, knowledge or ability.

5. Reason for Prof H Booyesen and Mr Julian Knight

- 5.1. The Applicants are asking for Prof Booyesen because he is the advocate who was the last legal representative of Applicants 2 and 3 during the main trial. He has knowledge of the court case of 61 000 pages.

- 5.1.1. The Applicants trust him and he was from time to time (limited and telephonically) consulted by the Applicants to gain his legal opinion on what to do *vis-à-vis* their appeal. He is aware of all the problems that the Applicants endured in the process of trying to appeal.

- 5.2. The Applicants are asking for Mr Knight, because he is a local lawyer and Prof Booyesen is living abroad in New Zealand. Prof Booyesen would need a capable local lawyer to launch such an application.

- 5.2.1. The Applicants have consulted with Mr Knight and trust him as a capable and trustworthy lawyer with much experience.

6. Constitutional base of the petition and envisioned application

- 6.1. The Applicants are not certain what procedure they should follow, whether a petition should be sufficient. But they have no other means of accessing

the competent and appropriate court, which they deem the Constitutional Court to be, than by sending this petition to the Judge President of the Constitutional Court of South Africa. As already stated, they are not jurists and this is their way of trying to get access to the court.

6.2. In this part, the Applicants will summarise the extend (with their limited understanding of the law) of the illegality of their incarceration and why it is in the interest of justice and especially to uphold the constitutional values, that such an application be heard.

6.3. The constitutional base of the Applicants envisioned application is as follow:

6.3.1. According to Art. 35 (2) (d) of the Constitution of South Africa of 1996, *“Everyone who is detained, including every sentenced prisoner, has the right to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released”*

6.3.2. Also Art.25(3)(d) and (o) states that: *“Every accused person has a right to a fair trial, which includes the right:*

6.3.2.1. *to have their trial begin and conclude without unreasonable delay;*

6.3.2.2. *of appeal to, or review by, a higher court.”*

6.3.3. Should a person be detained while his trial is not fair, the person’s detention is unlawful by virtue of unconstitutionality because of Art. 2 of the Constitution: *“This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”*

6.3.4. Because of the unreasonable delay of the Applicants judicial process to be finalised, their right of appeal is also effectively been denied. The problem which they encounter in attaining justice, is situated in the incarceration conditions created by the state's Department of Correctional Services and the delay in response and unreasonable administrative action of the Legal Aid Board as well as of the Registrar of the Appeal Court.

6.3.5. They cannot approach the High Court, because their problem is with the Appeal Court. They are prohibited access to the Appeal Court, due to ineffective and unreasonable administration. The only competent court in South Africa for the Applicants to approach to grant appropriate relief of the Applicants alleged infringement of their rights protected in the Bill of Rights, is the Constitutional Court of South Africa in accordance with Art. 38 of the Constitution, especially (b): *“Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are anyone acting on behalf of another person who cannot act in their own name.”*

7. Reasons for launching such an application

7.1. In this part of the Petition, the Applicants will portray that:

7.1.1. Their rights, protected by the Constitution's Bill of Rights, have been infringed by the Legal Aid Board and the Register of the Appeal Court. This

especially includes their rights protected by Art. 25 (3)(d) and (o) of the Constitution.

- 7.2. The Applicants were part of the record trial of more than 11 years in the High Court of Pretoria (case CC91/03). They were found guilty and have been sentenced, as portrayed already, on 28 October 2013.
- 7.3. The trial was delayed by months due to problems in the appointment of legal representatives and problems with the Legal Aid Board. Applicants 2 and 3 were unrepresented for 9 months and Applicant 1 for nearly 6 months while the trial continued due to these problems.
- 7.4. The record of the trial is 61 000 pages. The additional paper evidence handed in during the trial, is an additional 60 000 pages.
- 7.5. The Applicants still do not possess a complete copy of the record. They only possess an incomplete digital version on their personal computers (PC's).
- 7.6. During the trial, the Applicants, especially 2 and 3, had access to their computers, on which they stored their consultations and legal documents in regard to the main trial.
- 7.7. Immediately after sentencing, they informed the Department of Correctional Services of their intention to appeal. None the less, they were ordered to send their computers home.

- 7.8. The Applicants tried various remedies to attain their computers in order to prepare for their appeal. They were refused by Correctional Services for almost a year to have access to their computers in order for them to prepare for their appeal.
- 7.9. Applicants 2 and 3 immediately wrote to the Legal Aid Board, asking for the appointment of Prof Booyesen to handle their appeal. Until this day, he has not been mandated by the Legal Aid Board to handle their appeal.
- 7.10. The Applicants approached the Legal Aid Board for alternative legal aid in regard to their case and waited almost 8 months for their reply of refusal for any other legal aid except to appeal. Yet up to and until this day, no legal aid was given for the process of appeal, except delayed and incompetent help with the filing of Applicants 2 and 3's *in person* leave to appeal.
- 7.11. Due to the fact that Applicant 2 and 3's request for Prof Booyesen has not been finalised by the Legal Aid Board, they wrote their own application of leave to appeal with the limited access to their computer, the scanty judicial literature they have on their computer and without being qualified lawyers.
- 7.12. They consulted with Prof Booyesen with very limited access to telephones.
- 7.13. Due to the volume of the case, the incarceration circumstances and the inefficiency of the Legal Aid Board and delays of the various courts, the Applicants were only able to launch their appeals almost 4 years after being sentenced.

7.14. In April/May 2015 Applicants 2 and 3 began to prepare their documents for the filing of their application for leave to appeal on their own. As so many times before in the trial, they had to choose between the 'prompt' finalizing of the judicial process or upholding all the rights they possess for a fair trial, protected by the constitution. They decided to launch their application of leave to appeal in person because they could not wait any longer for the Legal Aid Board to mandate Prof Booysen. They wrote an application of 48 pages summarizing the arguments of all the infringements during their trial of their rights to a fair trial.

7.14.1. They had no judicial literature, no judicial education, an incomplete record, not even the complete sentence of the trial.

7.15. On 10 August 2015 Applicants 2 and 3 completed their documents for the leave to appeal. They contacted the Legal Aid Board for help to file their application. Capt. Nkosi, head of security of Zonderwater Correctional Centre, confiscated the memory stick from the Legal Aid Officials with the Applicants' documents on it. The Applicants wrote numerous complaints in this regard, but the memory stick was never recovered. They had to prepare again a new application.

7.16. On 28 February 2016 Applicants 2 and 3 wrote to the Legal Aid Board asking for the complete record of the trial, stating that they already asked for it on 23 April 2014 and by means of numerous telephonic contacts afterwards but without any success. They again asked for Prof Booysen to be appointed as their legal representative. They asked for access to the recordings of the trial, because various details are being omitted in the record. They also

asked for the complete hard copy of the record, because the page numbers of the digital record and the official hard copy are different. They also asked for the docket, because many of the evidence submitted to the court is in the docket, which they do not have access to.

7.17. While Applicants 2 and 3 waited for the complete record and sentence, they finalised their application of leave to appeal. When they receive no response in regard to Prof Booyesen's appointment or the complete record or documentation in regard to the trial, they send the documentation for leave to appeal to the Legal Aid Board on 11 May 2016.

7.18. On 21 June 2016 the Applicants wrote a follow up letter to the Legal Aid Board in regard to the letter of 28 February 2016 which has still not been answered. In the letter Applicant 1 was also included in the request for the appointment of Prof Booyesen to represent him in his petition to appeal.

7.19. On the 21 June 2016 the Applicants received the letter from the Legal Aid Board, dated 2 June 2016 by which they acknowledge the receipt of the Applicants' letter of 28 February 2016. In this letter they stated:

7.19.1. They applied for the judgment and sentence and the necessary documentation in regard to their trial record.

7.19.2. They wrote about the terms of appointment of Prof Booyesen, which are what they should have negotiate directly with Prof Booyesen and not with their clients. It is not the duty or even ethical for the clients to negotiate on behalf of the legal practitioner with the Legal Aid Board. The Legal Aid Board never finalised his appointment or even stated any problems or alternatives. There

was only no response. In this letter they also included Applicant 1, confirming his various attempts to attain Prof Booyesen as his legal representative.

7.19.3. They stated that they will submit a request from the Registrar of the High Court for the audio cassettes of the record with the complete record. The Applicants never received any other response from the Legal Aid Board.

7.19.4. They stated that they would send a request to the Director of Public Prosecutions for the complete and correct hard copy of the record. The Applicants never received it or any other response.

7.19.5. They will convey the Applicants' concerns, regarding parts of the record which could not be heard or were not portrayed on the record, to the Registrar of the High Court. No reply was ever received by the Applicants.

7.19.6. They confirm the various applications and requests to the Legal Aid Board via telephonic correspondence and consultations in regard to alternative remedies.

7.19.7. They confirmed that they received the documentation which was confiscated by the Correctional Officers.

7.19.8. In this letter the Legal Aid also attached the letters of proof for the filing of Applicants 2 and 3's application for leave to appeal. They filed the leave to appeal on 7 June 2016, almost a month after receiving it. It took them 2 weeks to hand the letter of proof to the Applicants.

7.20. On 15 August 2016 the Applicants wrote another follow up letter to the Legal Aid Board concerning their appeal process. In this letter they addressed the following:

- 7.20.1.1. The telephonic correspondence with the Legal Aid Board by which they agreed to negotiate with Prof Booysen to handle their appeals. (Nothing was done in this regard.)
 - 7.20.1.2. On 4 August 2016 the Legal Aid Board affirmed telephonically that they contacted, on the Applicants' request, the trial Judge to attain a date for the hearing of the application. They requested a copy of this correspondence.
 - 7.20.1.3. They repeated the same requests as they asked in the letter of 28 February 2016, which were still unanswered.
 - 7.20.1.4. The Applicants also asked if the Legal Aid Board would fund a further appeal to the Constitutional Court, should the application to the Appeal Court fail. (This was never answered.)
 - 7.20.1.5. The Applicants did not receive any response to this letter.
- 7.20.2. Since August 2016, 2 months after officially filing their application for leave to appeal, Applicants 2 and 3 received no response from the High Court for a date of their application. They contacted the Legal Aid Board asking the reason for the delay. No answer was obtained. The Applicants 2 and 3 started to draft an application to petition the Appeal Court to appeal, because three months after the filing of the documents, they still did not receive a date for the hearing, nor did they received any opposing documents from the State.
- 7.20.2.1. On 6 September 2016, three months after the application has been filed, they handed their self-written petition over to Kriek, Wassenaar and Vent Attorneys to file at the Appeal Court and paid them for the services.

7.21. On 13 September 2016 the official Me Mashapu from the Legal Aid Board had a meeting with Applicant 3. Me Mashapu informed Applicant 3 of the court date of 26 September 2016 by which the application for leave to appeal will be heard.

7.21.1. She handed him a bunch of documents, claiming it to be, the court file of the application for leave to appeal. On 26 September 2016, during the proceedings of their leave to appeal, Applicants 2 and 3 actually found that the file the administrator gave them, was actually the exact Court File for the Leave to Appeal. It baffled both the Applicants and the trial judge. The court file contains about 1000 pages. Part of it was the incomplete application of the Applicants' leave to appeal with another incomplete duplicate. There were several irrelevant pages from the main trial and even the docket. Parts of bail applications and even records of other cases. The court file was in total disarray.

7.22. Applicants 2 and 3 could not get hold of Kriek, Wassenaar and Vent Attorneys until 19 September 2016. They found that nothing has been filed whereby the Applicants cancelled their mandate.

7.23. On 26 September 2016 Applicants 2 and 3's application of leave to appeal was denied by the trial judge, Judge Jordaan.

7.23.1. During the procedures the State did not even file opposing documents and did not even respond to a quarter of the Applicant's application.

- 7.23.2. The Judge did not rule on about a third of the Applicants' points of application.
- 7.23.3. After the application was denied, the Applicants stated immediately in court that they are going to contest the court's ruling. Because the Applicants were unrepresented and had no income, they asked for an immediate ruling for the leave-to-appeal application's record to be given to them in order for them to use it in the petition to the Appeal Court as well as the ruling of refusing leave to appeal by the trial court. Judge Jordaan ordered it.
- 7.24. Between 26 and 30 September 2016 Applicant 3 phoned the Legal Aid Board, especially the official, me Isola. She was on leave and he could only get hold of her on 3 October 2016. Thereafter, Applicant 3 continued phoning me. Isola regularly to hear if the record was released from Judge Jordaan's office. After several phone calls the Applicant was told by me. Isola that the judge still did not sign the record.
- 7.25. Judge Jordaan signed the record of the application for leave to appeal on 16 October 2016. On 25 October 2016 the record was released from the office of Judge Jordaan, which is a month after the leave of appeal was heard.
- 7.26. The Legal Aid Board sent the record to a friend of the Applicants electronically on 11 November 2016, which they finally received on 13 November 2016. Hence, almost 2 months after the application for leave to appeal, Applicants 2 and 3 could start working on their petition to the Appeal

Court. They still had not received the hard copy of the trial record, up to date, nor the hard copy of the ruling of the trial court refusing leave to appeal.

7.27. Without any legal background, literature or a legal representative and with very limited access to their personal computers, Applicants 2 and 3 wrote their petition to appeal to the Judge President of the Appeal Court and finalised it on 1 December 2016.

7.28. Applicants 2 and 3 handed their Petition for Leave to Appeal over to an administrator of the Legal Aid Board on 1 December 2016 with the instruction to file their petition.

7.29. The Applicants could not get hold of any of the administrators of the Legal Aid Board until 31 January 2017. Applicant 3 spoke with me. Isola asking about the progress of the filing of the petition. She gave him the names and numbers of me. Mashapu, who is handling the filing of the petition. Applicant 3 phoned me Isola and Mashapu several times during 8-17 February 2017 to find out about the progress with the filing. She informed him that she is still waiting to obtain the record of the main trial.

7.30. After telephonically consulting with Prof Booyesen in regard to the delay of the Legal Aid Board to obtain the record of the main trial, he suggested that the petition be send without the record, because in terms of Art. 316 (10) of the Criminal Procedure Act of 1977, it is the responsibility of the Registrar of the Appeal Court, when he received an application from a person who is not represented, to request the record from the registrar of the trial court.

- 7.31. On 27 February 2017 Applicant 3 spoke with me. Mashapu of the Legal Aid Board. She still had not filed the petition and was still waiting to obtain the main trial record. The Applicant told her that she must continue to send the petition as the Applicants wrote it, without the record, because of the Art. 316 (10) of the Criminal Procedure Act and because the Applicants cannot wait indefinitely without results.
- 7.32. On Wednesday 8 March 2017 Applicant 3 phoned Me. Mashapu of the Legal Aid Board and she confirmed that she filed the petition. She agreed that she would bring the Applicants the receipt of the filing. She never did.
- 7.33. On 28 March 2017 Applicant 3 phoned Me. Mashapu again. She informed him that the Registrar of the Appeal Court sent back their petition for leave to appeal. There was neither a letter of explanation accompanying the documentation nor a telephone call. She said that she assumed it was because it was without the main trial record.
- 7.34. Applicant 3 phoned Prof Booysen, informing him of the above telephonic correspondence with the Legal Aid Board. He agreed that he would write a letter on their behalf to the Legal Aid Board, in order to speed up the delay in correspondence, because the Applicants have no access to internet for judicial correspondence.
- 7.35. On 30 March 2017 Prof Booysen wrote a letter to the Legal Aid Board, asking them to write a letter on behalf of Applicants 2 and 3 to the Registrar of the Appeal Court, asking him for an official letter, explaining the reasons why the Applicants' petition was sent back and also his interpretation of Art. 316

(10) of the Criminal Procedure Act, should it be that the petition was sent back because of the lack of the trial record.

7.36. On Monday 10 April 2017 Applicant 3 contacted Me. Isola of the Legal Aid Board. She acknowledged the receipt of Prof Booyesen's letter. She said that she is going to find out whether the Appeal Court does not already have the record, because accused 20 handed in his petition. She also confirmed that she is planning to write a letter to the Registrar of the Appeal Court in this regard.

7.37. Applicant 1 had a similar experience of multiple delays with his petition to the Appeal Court for leave to appeal:

7.38. On 30 January 2014 Applicant 1's advocate launch an application for leave to appeal. Yet Applicant 1 did not have his computer with him and was solely dependent on his advocate to prepare his application for leave to appeal without any meaningful insight into his application. The conditions in which the Applicants were detained at Kgosi Mampuru II Correctional Centre, were of such inhumane proportions that they were transferred to Zonderwater Correctional Centre. Applicant 1's application for leave to appeal was denied by Judge Jordaan. He immediately approached Prof Booyesen to handle his appeal. Up and until today, the Legal Aid Board did not mandated Prof Booyesen to handle his petition for leave to appeal.

7.39. On 8 March 2014 Applicant 1, not satisfied with the handling of his leave to appeal by his legal representative during the trial, Adv. PF Pistorius,

approached Prof Booyesen, to handle his petition. Prof Booyesen agreed, should he receive a mandate from the Legal Aid Board.

7.40. In April 2014 Applicant 1 wrote a handwritten letter to the Legal Aid Board in requesting Prof Booyesen to be his legal representative to handle his Petition for his leave to appeal. He never received an answer. Prof Booyesen also wrote a letter to the Legal Aid Board, but it was never answered.

7.41. During 2014, because Applicant 1 did not receive any answers from the Legal Aid Board, he mandated the attorney, Daan Mostert, to mandate Prof Booyesen to handle his petition of leave to appeal.

7.42. In 2014 he phoned his previous advocate multiple times and sent messages via attorneys to him requesting the record of the judgment on dismissing the leave to appeal. Adv. Pistorius never replied. For the next two years he asked other attorneys and tried various remedies to gain the judgment on the dismissing of the leave to appeal. The reply he received was that it was still with Judge Jordaan. It was only at the end of 2016 that he was able to get hold of his judgment of dismissing the leave to appeal.

7.43. At the end of 2014 Applicant 1 had to withdraw his mandate to Prof Booyesen due to a lack of funds.

7.44. During 2015 Applicant 1 approached Prof Booyesen to provide *pro bono* legal advice in relation to points of law in regard to his appeal. Due to the fact that he received no answer from the Legal Aid Board, he decided to continue to write his own petition, with the points of law he received from Prof Booyesen. With the limited access to his computer, no legal literature, no law education

and without denouncing his right to legal representation, he completed his petition for leave to appeal, because he assumed that he would not any time soon received an answer from the Legal Aid Board.

7.45. In July/August 2016 Applicant 1 handed his petition to the attorney Stephan le Roux for filing, still as unrepresented detainee.

7.46. On 18 October 2016, because Applicant did not receive any response from the Registrar of the Appeal Court, he wrote a letter to the Registrar of the Appeal Court stating:

7.46.1. In 2014 he requested assistance from the Legal Aid Board, without response.

7.46.2. He is unrepresented and does not have funds for private legal representation.

7.46.3. Prof Booysen only helped with technical points.

7.46.4. In August 2016 he mandated an attorney to act as a “posting service” to file the petition.

7.46.5. After the last phone call to his attorney, the Petition was still not filed.

7.46.6. He therefore asked for the Registrar’s help.

7.47. It was some time at the end of 2016 that the Applicant was able to attain his judgment of dismissal of his application for leave to appeal, via attorney Le Roux, and it was sent to the Registrar of the Appeal Court.

7.48. Since Mr Le Roux was mandated to obtain the Order of the High Court dismissing the leave to appeal in July 2014, he was unable to do that.

7.49. On 14 April 2017 Applicant 1 received a letter from the Registrar of the Appeal Court, Mr Myburgh, dated 1 February 2017. It was sent to Grootvlei Correctional Centre and was relayed to Zonderwater Correctional Centre. He clearly did not read the Applicant's letter and sent a standard reply, not relevant to the Applicant's situation. In this letter he stated:

7.49.1. The Applicant's documents does not comply with the requirements, rules and practice guidelines of the Appeal Court.

7.49.2. He dealt with the scenario should the applicant being sentenced by a magistrate (which is not applicable).

7.49.3. Should he be sentenced by a judge, if it was a high court case, he must apply for leave to appeal (which the Applicant's letter clearly stated he already did).

7.49.4. If he is not satisfied with the judgment, he must apply for special leave to appeal (The Applicant was asking for special leave to appeal, but without progress and therefore asking for help).

7.49.5. The petition must be in a specific form, which he attached. (It was the first time that the Applicant received this form, a year after he sent the letter to the Registrar.) This form included:

7.49.5.1. Must be in typed form consisting with a notice of motion. (The Applicant did this, he just did not had the Registrar's specified form).

7.49.5.2. He must ask for condonation (which the Applicant did).

7.49.5.3. The application must be supported by the following:

7.49.5.3.1. An affidavit (The Applicant did it).

7.49.5.3.2. Judgment on conviction. (This was done)

7.49.5.3.3. Judgment on sentence. (This was done)

- 7.49.5.3.4. Judgment on dismissing an application on leave to appeal. (This was done)
- 7.49.5.3.5. Order of the High Court dismissing the leave to appeal. (Applicant 1 engaged Mr Stephan Le Roux (attorney) who since January 2017 tried all possible means to obtain the said document without any success.)
- 7.49.5.4. Four copies must be made of the full original set of all the above documents.
- 7.49.5.5. The original set and two copies must be served on the original court.
- 7.49.5.6. He ended his letter with: "kindly inform inmate and even refer him to legal aid, because his case is very complicated. If he messes this up, there is nowhere else to go, as far as appeals are concerned."

8. What are the Applicants' expectations?

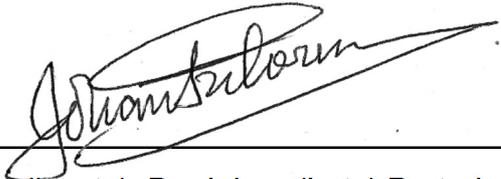
- 8.1. In view of the history with the Legal Aid Board and the correspondence with the courts, what is the Applicants to expect? What is the timeline in which their right to appeal could be finalised?
- 8.1.1. On account of Applicants 2 and 3, they are waiting for the Legal Aid Board to write to the Registrar of the Appeal court, in accordance to the letter of Prof Booyesen. Thereafter the Registrar should answer them and the Legal Aid Board should give us the letter. This simple procedure, which could be remedied within a few days, would take at least 2-3 months to complete, if the Applicants are lucky.
- 8.1.2. Should the letter be only that the Applicants have to attach the record, how long are the Applicants to wait for the Legal Aid Board to obtain the record and make copies of the 61 000 pages? It is impossible with a record of more than 100 000 pages if all the written exhibits are included.

- 8.1.3. Alternatively, the Applicants have to file an application against the Registrar of the Appeal Court, to obtain a ruling against him for not accepting the petitions for leave to appeal. How long would this take? Who would file the application on the Applicants behalf? The cost to file such an application is above the means of the Applicants. Should they ask for the Legal Aid Board to help them with an application against the Registrar of the Appeal Court they will have to wait another 5 – 8 months for a reply.
- 8.1.4. Even if they would succeed in forcing the Registrar of the Appeal Court to accept their petition, or if the Legal Aid Board finally attaches the record of the trial after another 6 months – then there are two options: The petition is granted or denied.
- 8.1.4.1. If the petition were to be granted, the Applicants have the right to appeal. Would three to five judges read 61 000 pages of the record? Should they be occupied for a year or more just reading the record? How long is this process going to take? Another 3 years? Then the Applicants have been incarcerated for 18 years without the completion of their legal process. Should the Appeal Court found against them, and they decide to approach the Constitutional Court, the process is starting all over again. If the constitutional case should take another year or two, the Applicants would have been incarcerated for 20 years without their judicial process being completed! Should they then seek remedy from an international tribunal, another year or two would pass and they will end up with a judicial procedure of 21 years plus! They will then have served 8 years longer than a person who was given a life sentence, in accordance with

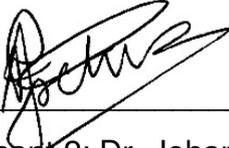
the old Correctional Service Act, who would be allegeable for parole after 13 years.

8.2. This situation just cannot continue. The Applicants are always waiting for some or other process to be finalised or given attention to, and in the meantime, weeks and months and years are passing by and their right to appeal becomes non-existent due to the delays resulting from a complete system failure.

8.3. Because of the above, the Applicants ask the Judge President to end this Constitutional infringement by **ruling *ex parte* that the Legal Aid Board of South Africa must forthwith appoint Prof H Booysen and Mr Julian Knight as the Applicants' legal representatives, respectively as advocate and lawyer, in order for them to launch an application, in accordance of Art. 38 of the Constitution of South Africa of 1996, on behalf of the Applicants before the Constitutional Court to contest the constitutionality of the Applicants incarceration.**



Applicant 1: Dr. Johan (Lets) Pretorius



Applicant 2: Dr. Johan Pretorius



Applicant 3: Dr. Wilhelm Pretorius