Chapter Three

The Politics of Prosecutions

The question of how to deal with the legacy of the TRC in terms of criminal accountability is part of the overall process of transitional justice in South Africa. The issue is, as is generally the case with matters of transitional justice, to a great extent driven by and charged with political considerations. A former minister in the ANC government even demanded that the matter should be dealt with solely through political channels and not left to the courts.\(^1\) Obviously, the success or failure of prosecutions in the wake of the TRC depends to a large degree on the political support for such proceedings. Moreover, prosecutions have an impact on society, are perceived totally differently politically and have consequences for reconciliation. As the political factors clearly have consequences for the overall process of criminal trials, any assessment of post-TRC prosecutions has to take account of the political context within which such trials find themselves. The following chapter will do just this by touching on the discussions and players, but mainly by focussing on consultations of the government with certain groups of perpetrators and the government’s decisions and general policy on the issue.

1. **Overview**

The following subchapter will describe the main political and social interest groups engaged in advocacy for or against prosecutions. Also, a cursory overview of the political discussions and public debates along

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\(^1\) *Apartheid crimes a political issue—Maharaj* SAPA, Aug 1, 2007.
with a collection of government’s most important statements on the subject will be given.

1.1 Interest groups

During the operation of the TRC a wide range of NGOs, especially from the human rights sector, actively took part in the process. The number of organisations engaged with the issue of post-TRC prosecutions after 1998 is minimal compared to this. However, especially groups and networks acting on behalf of former members of the state security forces continue to exist and remain influential. The most important organisations will be described briefly to provide a background to their involvement of different forms, which will be focussed on at a later stage.

1.1.1 Human rights organisations

Most NGOs, which are engaged in promoting human rights in South Africa and which supported the TRC and the transition to democracy, deal only occasionally with issues of criminal accountability in the wake of the TRC.

The Khulumani Support Group\(^2\) is the NGO most actively engaged in advocacy efforts on post-TRC prosecutions. The Khulumani group, which was founded in 1995, represents about 54,000 victims of apartheid era violence. During the work of the TRC its efforts were aimed at helping victims to take part in and benefit from the TRC process. Nowadays, the organisation seeks the implementation of proper reparations\(^3\) for apartheid victims, the full-scale prosecution of apartheid operatives and generally the recognition of victim interests in the wake of the TRC. Khulumani calls for apartheid criminals to be held accountable since only then can victims attain justice for their endurance of gross human

\(^2\) See http://www.khulumani.net.

\(^3\) See on the reparations for apartheid victims as envisaged by the TRC scheme: K. Koppe 
Wiedergutmachung für die Opfer von Menschenrechtsverletzungen in Südafrika (2005).