

Adv Shamila Batohi,
National Director of Public Prosecutions
National Prosecuting Authority
VGM Building, 123 Westlake Ave,
Weavind Park, Silverton, Pretoria, 0184

11 October 2023

Dear Advocate Shamila Batohi,

Request for public release of the Advocate Dumisa Ntsebeza SC report into the NPA's approach towards prosecutions of the TRC cases

We write to you as survivors and the families of victims of apartheid era gross human rights violations to request that your office publicly releases the report by Advocate Dumisa Ntsebeza SC to the National Prosecuting Authority (NPA). Ntsebeza was appointed to review the measures adopted by the NPA to deal with and prosecute Truth and Reconciliation Commission (TRC) cases and provide recommendations as needed.

Our rights to justice, truth recovery and reparations, were brutally compromised when the NPA, the South African Police Services and other state institutions succumbed to political interference by the Executive. As a result, they neither investigated nor prosecuted apartheid era political crimes, and those complicit in them. Many of these crimes were investigated by the TRC, which recommended further investigation and prosecution in the instances when amnesty had been denied or not applied for. The South African state is responsible under both international and domestic law for ensuring our rights to truth, justice, reparations and the guarantee of non-recurrence.

The failure to duly and timely investigate and prosecute apartheid era political crimes has led to a massive injustice, and is a flagrant violation of our rights to accountability including criminal justice. High-profile apartheid era perpetrators and foot soldiers went to their graves without having ever faced justice. Similarly, many of our family members died in pain without knowing the truth about what had happened to our loved ones. These actions of the state, the NPA and the SAPS have deepened impunity in our country. In *Rodrigues v NDPP* ([2021] 3 All SA 775 (SCA)), the Supreme Court of Appeal found it "perplexing and inexplicable" why such a stance on prosecutions of the TRC cases was taken in the new constitutional order.

In June 2021, the NPA and the Directorate for Priority Crimes Investigations (DPCI, Hawks) issued a joint press statement. They announced a new approach to the investigations and prosecutions of the cases arising from the TRC. The change in the state's approach to apartheid-era cases was a result of sustained pressure from survivors, victims' families and civil society, which have been demanding justice since the wrapping up of the TRC in 2003.

We felt encouraged by the appointment of Advocate Dumisa Ntsebeza SC and welcomed this decision by the NPA with much hope and anticipation. However, nine months have now passed since the NPA announced this three-month inquiry by Advocate Ntsebeza SC and we

are yet to see the fruits of the process. We assume that by now the inquiry has concluded its work and submitted its report. It is in this context that we are reaching out to you to request the release of the report to the public.

First and foremost, the release of the inquiry report is essential to uphold the principles of transparency and justice. As victims' families and survivors we have endured unimaginable pain and suffering. We have an inherent right to know the truth about what transpired during the inquiry and the recommendations that have arisen from the inquiry's investigation. We also wish to know what steps, if any, the NPA is taking in response to the inquiry's recommendations.

Furthermore, releasing the report is crucial for rebuilding trust in the NPA. The scars of the past are deep, and the only way to heal them is through transparency and accountability. By making the inquiry report public, the NPA would signal its intent to face and acknowledge the shortcomings and challenges in its past approach to TRC cases. It would also demonstrate its commitment to ensuring prompt investigations and prosecutions.

The release of the report is also vital to ensure public accountability. The widespread access to the report's findings and recommendations would allow us and the general public to hold the NPA accountable for the implementation of these recommendations. Accountability is a foundation of the rule of law, and there can be no accountability without full and open access to this information.

We therefore request that you release the report to the public by the end of October 2023: to serve the cause of justice and truth, and to demonstrate your commitment to rebuilding trust among the people in South Africa by upholding the principles of accountability and transparency.

Thank you for your attention to this matter, and we look forward to your positive response.

Yours sincerely,

Survivors and families of victims including:

Muhammed Haron, on behalf of the family of the late Imam Haron

Lyndene Page, on behalf of the family of the late Deon Harris

Neville Beling, a survivor of the Highgate Hotel Massacre in 1993

Karl Weber, a survivor of the Highgate Hotel Massacre in 1993

Tshidiso Motasi, on behalf of the family of the late Irene and Richard Motasi

Fowzia Rahiman, on behalf of the family of the late Dr Hoosen Haffejee

Thuli Kubheka, on behalf of the family of the late Ntombikayise Kubheka

Marc Fransch, on behalf of the family of the late Anton Fransch

Alegria Nyoka, on behalf of the family of the late Caiphus Nyoka

Theledi Tlhapi, on behalf of the family of the late Ramatua Tlhapi

Mbulelo Goniwe, on behalf of the family of the late Matthew Goniwe

Mbusowesizwe Khoza, on behalf of the family of the late Musawakhe Phewa

Nombuyiselo Mhlauli on behalf of the family of the late Sicelo Mhlauli

Tshepo Matabane, on behalf of the family of the late Peter Matabane
Maide Selebi, on behalf of the family of the late Eustice Madikela
Tryphina Mokgatle, on behalf of the family of the late Zandisile Musi
Thandi Nhlapo, on behalf of the family of the late Fanyana Nhlapo
Mkhontowesizwe Godolozzi, on behalf of the family of the late Qaqawuli Godolozzi
Mohammad Timol, on behalf of the family of the late Ahmed Timol
Lonwabo Mkonto, on behalf of the family of the late Sparrow Mkonto
Mandisa Hashe, on behalf of the family of the late Siphon Hashe
Hlekani Rikhotso and Edgar Mushwana, on behalf of the family of the late Ignatius Mtebule
Stephen Mabelane, on behalf of the family of the late Matthews Mabelane
Nontombi Nama, on behalf of the family of the late Champion Galela
Lukhanyo Calata, on behalf of the family of the late Fort Calata
Bonakele Jacobs, on behalf of the family of the late Mxolisi Jacobs
Stephen Aggett, on behalf of the family of the late Dr Neil Aggett
Imraan Valodia, on behalf of the family of the late Dr Rick Turner
Thembi Nkadameng, on behalf of the family of the late Nokuthula Simelane

The letter has been further endorsed by the following civil society organisations:

Foundation for Human Rights (FHR)

Khulumani Galela Campaign

Human Rights Media Centre (HRMC)

Open Secrets (OS)

Centre for Applied Legal Studies (CALS)

Fort Calata Foundation

Imam Haron Foundation

Helen Suzman Foundation (HSF)

Legal Resources Centre (LRC)

Institute for Healing of Memories

Institute for Justice and Reconciliation (IJR)

The Southern African Catholic Bishops' Conference Justice and Peace Commission

South African Coalition for Transitional Justice (SACTJ)

For media query contact: Mx Kholekile Mnisi, Media and Communications Specialist,
Foundation for Human Rights (FHR), at kmnisi@fhr.org.za / 0656130977