

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATION
REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION
OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION
CASES (TRC CASES)**

HELD AT:

Sci-Bono Discovery Centre, Corner Mirriam Makeba & Helen Joseph Street,
Newtown, Johannesburg

BEFORE:

The Honourable Retired Madam Justice Sisi Khampepe – Chairperson
Retired Judge Diale Kgomo - Commissioner
Advocate Andrea Gabriel SC - Commissioner

SWORN STATEMENT

I, the undersigned,

MXOLISI SANDILE OLIVER NXASANA

do hereby state under oath as follows:

- 1 I am an adult male attorney and former National Director of Public Prosecutions in the period 1 October 2013 to 1 June 2015.
- 2 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.

INTRODUCTION

- 3 In September 2025, the TRC Cases Commission addressed a Request for Information (RFI) to me aimed at establishing whether I had any

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knowledge, or have within my possession any documents, minutes and memoranda concerning the issues raised by the Commission's Terms of Reference. I attach this RFI here as annexure "**MN1**".

- 4 I am not in possession of any National Prosecution Authority documents; including documents in connection with the issues raised by the Commission's Terms of Reference. It is my evidence that during my tenor with the NPA, I never dealt with TRC Cases at all.
- 5 On 10 June 2026, the Commission served me with a Rule 10(6) Notice issued in terms of the Commission's Rules (**the Notice**). The Notice referred me to a request for a meeting with me from the Legal Resources Centre who were then the Legal Representatives of Ms Thembisile Simelane and the Simelane family.
- 6 The request from the LRC was in the form of a letter dated 16 January 2014. In this letter, the LRC detailed the failures of the NPA in the handling of the case of the late Ms Nokuthula Simelane, who is the sister to Ms Thembisile Simelane. It is evident from this letter, which I have attached hereto together with the Notice as "**MN2**", that the LRC and the family of Nokuthula Simelane were critical and angered by the manner in which the Priority Crimes Litigation Unit (**the PCLU**), a unit within the NPA tasked with among other things, the management and direction of the investigation and prosecution of TRC Cases had failed in their mandate and duties associated with that mandate.

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- 7 I have never received such a letter. I cannot therefore address any of the issues the Commission has raised with me in the Notice. I note however that the letter was transmitted to the NPA through facsimile rather than an e-mail. This may explain my lack of knowledge of the letter and why the letter never came to my attention. I had an open-door policy, where everyone was welcome to see me. I met with a number of persons who had issues with the NPA. It would therefore have been remiss of me not to have met with the LRC had I known of this letter.
- 8 Notwithstanding my assertions in the preceding paragraphs, I accept that my role as former NDPP, included ensuring that the TRC Cases were prioritised and given the necessary attention. This overall responsibility, however, does not take place in a vacuum. It occurs within an environment where there are delegations of authority, various special directorates and structures created to ensure the smooth functioning of the NPA.
- 9 It is also important to appreciate first the climate within which I was operating as the NDPP, as this climate influenced my ability to discharge my duties effectively, including focussing on the TRC Cases.
- 10 Accordingly, I depose to this affidavit to explain how I discharged my obligations under section 179 of the Constitution of the Republic of South Africa, 1996 (**the Constitution**), as given effect to by the National Prosecution Authority Act, 32 of 1998 as well as all the Regulations,

M. J. Mason

Policy Directives and Guidelines obtaining during my tenure as the NDPP.

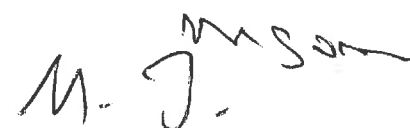
- 11 My tenure as the NDPP was very brief and marred by controversy and traumatic events. This trauma persists to this very day. My participation in this process evokes these painful memories.
- 12 I depose to this statement, notwithstanding my trauma, out of national duty and a commitment to assist the Commission in the discharge of its mandate as outlined in the Terms of Reference.
- 13 My affidavit adopts the following scheme:
 - 13.1 section 1 sets out a brief history of my academic credentials, professional experience, my appointment as the NDPP and the controversy which marred my tenor as NDPP; and
 - 13.2 section 2 outlines how the political infighting within the NPA affected my focus on the TRC Cases.

ACADEMIC BACKGROUND, PROFESSIONAL EXPERIENCE AND APPOINTMENT AS NDPP

- 14 I hold a B.Proc degree and an LLB from the University of Zululand. I practised as an attorney in Durban, prior to my appointment by the former President Jacob Gedleyihlekisa Zuma (Mr Zuma) as the NDPP in September 2013, effective from the 1st of October 2013.

M. J.

- 15 It is public knowledge that my journey within the NPA was not an easy one. I was neither received with welcoming arms, nor did I enjoy fair treatment during my tenure. When I got to the NPA, many things had already happened – people were opposed to my appointment arguing that I was not qualified for the position. They had never seen me, did not know me and wanted someone else to occupy the NDPP position. Many officials had doubt about whether I could do that job and they planted the seed of doubt in former President Jacob Zuma's mind.
- 16 There was an apparent smear campaign, the source of which I could and still cannot identify with certainty. Newspaper outlets and the media in general began circulating false allegations and stories about me. They were digging up information aimed at discrediting me. I had to deal with several side issues which greatly impeded my functioning. I received no handover or handover report from the Acting National Director of Public Prosecutions, Advocate Nomgcobo Jiba. These were the conditions under which I had to operate. I tried my best, to concentrate on my work, but it was difficult – politics and infighting within the NPA got in the way.
- 17 In July 2014 I received correspondence from the President that he had taken a decision to institute an inquiry against me on the basis that I was not fit and proper to hold office as the NDPP. Eventually, the President issued me with a Notice of Suspension in July 2014, on the basis that I was not fit and proper to be an NDPP. I then launched legal. Ultimately, I relinquished my position as the NDPP through a Mutual Separation Agreement.

A handwritten signature in black ink, appearing to read 'M. J. Sam'.

18 Insofar as the handling of the TRC Cases by the NPA during my tenure is concerned, I did not deal with any TRC Cases during my tenure, nor did I receive any report on the TRC Cases. I also did not request any report.

19 When I was appointed as the NDPP, Advocate Shaun Abrahams was the Head of the PCLU and Advocate Chris Macadam was reporting to him. This caused a lot of tension between Advocate Abrahams and Advocate Macadam. Advocate Macadam had a lot of experience within the NPA and felt aggrieved to be reporting to somebody junior to him. Advocate Abrahams was a junior to Advocate Chris Macadam by far.

20 I have read Advocate Macadam's affidavit where he states that I removed him from the TRC Cases and assigned him to matters concerning the Organisation for Economic Cooperation and Development (the OECD). This is indeed correct. Chris was the Deputy Director within the PCLU and was knowledgeable and well-versed with issues pertaining to the OECD where there were greater risks.

21 In an effort to ensure that there was rotation within the NPA to widen the experience of the NPA Management. I should point out that the National Prosecutions Service was the main operating business unit in the NPA. I was concerned that Advocate Jiba as head of the National Prosecution Service was abusing this powerful position, using it as the platform to influence the Deputy Directors of Public Prosecutions and prosecutors in other regions to disobey and undermine my instructions.

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- 22 I then made changes to the leadership of the NPA. I moved Advocate Jiba from being head of the NPS to the Civil Litigation Unit. Advocate Mogatle who was the Head of the Civil Litigation Unit was made Head of the PCLU. Advocate Ramaite became the Head of the NPS.
- 23 Advocate Jiba invokes bad feelings within me. One incident that stands out for me concerning Advocate Jiba is the one where the public was falsely informed that I had the docket concerning President Zuma's case. The truth is I never had sight of this docket – Advocate Jiba kept it with her.
- 24 Insofar as to who would be tasked with the investigation of TRC Cases, I never had any complaints or reports that the PCLU was battling with investigators. The PCLU operated on a model where investigations of the crimes, which fell under the PCLU, were directed and managed by the prosecution. The investigators came from the Hawks.

CONCLUSION

- 25 I accept that as former head of the NPA, I was responsible for ensuring that the TRC Cases were investigated and prosecuted. The political climate and environment under which I operated made it difficult for me to focus on my job. I was never briefed on TRC Cases at anytime during my tenure.

M. J.



MXOLISI SANDILE OLIVER

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DEPONENT

Thus, signed and sworn before me, on the **20th day of June 2026**, after the deponent has acknowledged that he knows and understands the contents of this affidavit and that it is binding on his conscious, the Regulations contained in **Government Notice No R 1258 of 21 July 1972**, as amended and **Government Notice No. R 1648 of 19 August 1977**, as amended, having been complied with.



COMMISSIONER OF OATHS

Full Names and Surname:

Official Capacity:

Address:

Date:

COMMISSIONER OF OATHS (RSA)
Mfanakayise Jeffery Zondo
 Attorney of the High Court and Conveyancer
 Practice No: 77075
 Zondo J and Partners Inc
 157 Belvedere Road, Durban North, 4051



Mr Mxolisi Nxasana

mx67nxasana@gmail.com

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15 October 2025

Dear Mr Nxasana

REQUEST FOR ASSISTANCE WITH INFORMATION IN AID OF THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES.

- 1 On 29 May 2025, the President of the Republic of South Africa, Mr Cyril Matamela Ramaphosa, issued Proclamation Notice 264 of 2025 establishing a Commission of Inquiry to Inquire into Allegations Regarding Efforts or Attempts Having been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission ('TRC') Cases ('the Commission').
- 2 The Terms of Reference of the Commission require that, among other things, the Commission must inquire, make findings, report and make recommendations concerning:

"...whether, why and to what extent and by whom, efforts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases."
- 3 At the relevant time specified in the Commission's Terms of Reference – that is, from 2013 to 2015 – you served as the National Director of Public Prosecutions . In that capacity, you may have had access to information concerning decisions, discussions, or policies affecting the investigation and prosecution of TRC-related cases.



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- 4 The Commission therefore respectfully requests your assistance with furnishing any material in your possession, or to which you had access to during your tenure, that may be relevant to its inquiry. This includes memoranda, correspondence, minutes of meetings, or other documentary records relating to the TRC cases referred by the Amnesty Committee for investigation or prosecution.
- 5 In addition to providing any relevant material, the Commission would also appreciate receiving, in the form of an affidavit, your own account of any discussions, decisions or considerations during your tenure as President that may bear on the matters set out in paragraph 1.1 of the Terms of Reference. Such a statement will greatly assist the Commission in understanding the context within which decisions relating to TRC cases were taken.
- 6 Should you require any assistance in preparing your affidavit or in furnishing the requested material, you are entitled to liaise with your legal representatives. Alternatively, you may contact the Commission's Secretariat directly, and we will gladly provide the necessary support.
- 7 We would be grateful if you could provide your response no later than the 24th of October 2025, to allow the Commission sufficient time to consider the information and complete its work timeously.

Yours faithfully

Advocate I Semanya SC

CHIEF EVIDENCE LEADER



MN 2

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**THE JUDICIAL COMMISSION OF INQUIRY TO INQUIRE INTO ALLEGATIONS
REGARDING EFFORTS OR ATTEMPTS HAVING BEEN MADE TO STOP THE
INVESTIGATION OR PROSECUTION OF TRUTH AND RECONCILIATION
COMMISSION CASES**

**CHAIRPERSON'S DIRECTIVE IN TERMS OF REGULATION 10(6) OF THE
REGULATIONS OF THE COMMISSION**

TO: MR MXOLISI OLIVER SANDILE NXASANA

**ADDRESS: 137 GARDEN ROAD, SUMMERSET ESTATE,
MIDRAND**

TEL: 082 825 6678

EMAIL: MXO76NXASANA@GMAIL.COM

1. By virtue of the powers vested in me in my capacity as Chairperson of the above-mentioned Commission by Regulation 10(6)¹ of the Regulations of the Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop investigation or prosecution of Truth and Reconciliation Commission cases, I hereby direct you, **Mr Mxolisi Oliver Sandile Nxasana**, to deliver on or before 19 June 2026 to the Secretary of the Commission at the address given above an affidavit or affirmed declaration in which:

¹ Regulations 10(6) of the Regulations of the Commission reads: "For the purposes of conducting an investigation the Chairperson may direct any person to submit an affidavit or affirmed declaration or to appear before the Commission to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person."

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- (a) you state whether you admit or deny the allegations made about, or against, you and/or the PCLU or the National Prosecuting Authority in a letter written to you in your capacity of Acting National Director of Prosecutions on 16 January 2014 by the Legal Resources Centre, a copy of which letter is annexed hereto as "A";
 - (b) you state whether you acceded to the request for a meeting with you, and set out fully what transpired at the meeting;
 - (c) if you did not agree to the meeting, you set out fully: why you did not agree to the meeting; whether you made that decision known to the LRC; and if you responded in writing, you are required to forward to the Commission's Secretary, within seven days, your written communication to the LRC.
2. If you would like the assistance from the Commission in order to prepare the affidavit or affirmed declaration, you must, within seven business days of receipt of this directive, contact, or, communicate with, the Secretary of the Commission and indicate that you would like such assistance in which case the Commission will provide someone to assist you with the preparation of the affidavit or affirmed declaration. In such a case you will not pay anything for such assistance. In this regard, please contact Ms Thembisile Graham at investigations@trc-inquiry.org.za

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3. If, in order to prepare the affidavit, or affirmed declaration, you do not need any assistance from the Commission, you must, with or without the assistance of a lawyer of your own choice, prepare the affidavit or affirmed declaration and have it delivered to the Secretary of the Commission on or before the date given above for the delivery of the affidavit. If you make use of a lawyer of your own choice to assist you to prepare such affidavit or affirmed declaration, the Commission will not be responsible for the payment of your lawyer's fees or costs.
4. This directive is issued for the purpose of pursuing the investigation of the Commission.
5. Your attention is drawn to Regulations 8(2), 11(3)(a) and (b) and 12(2)(d) and (e) of the Regulations of the Commission, as amended.

Regulation 8(2) reads:

"8(1) ...

(2) *A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court, except in criminal proceedings where the person concerned is charged with an offence in terms of section 6 of the Commissions Act, 1947 (Act No. 8 of 1947)."*



MN2

Regulation 11(3)(a) and (b) reads:

"11(1) ...

(2) ...

(3) *No person shall without the written permission of the Chairperson –*

(a) *disseminate any document submitted to the Commission by any person in connection with the inquiry or publish the contents or any portion of the contents of such document; or*

(b) *peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson."*

Regulation 12(2)(d) and (e) reads:

"12(1) ...

(2) *Any person who*

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(b) ...

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- (c) ...
- (d) *refuses or fails, without sufficient cause, to submit, within a period fixed by the Chairperson or at all, an affidavit or affirmed declaration pursuant to a directive issued by the Chairperson under Regulation 10(6); or*
- (e) *contravenes a provision of regulation 11*
- is guilty of an offence and liable on conviction -*
- (i) *in the case of an offence referred to in paragraph (a), (c), (d) or (e) to a fine, or to imprisonment for a period not exceeding 12 months; and*
- (ii) ..."

DATED AT JOHANNESBURG ON THIS DAY OF JUNE 2026.

JUSTICE SISI KHAMPEPE

Chairperson: Judicial Commission of Inquiry to inquire into allegations regarding efforts or attempts having been made to stop investigation or prosecution of Truth and Reconciliation Commission cases

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Your Ref:

Our Ref: Our Ref: B Sibya

**The Acting National Director of Public Prosecutions
National Prosecuting Authority
Private Bag X752
Pretoria
0001**

By fax: 012 845 7291

16 January 2014

Dear Mr. Nxasana

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)**

1. We refer to the letter of Adv S K Abrahams, Acting Director of the Priority Crimes Litigation Unit (PCLU), dated 5 December 2013 and received on 9 December 2013, in response to our letters dated 20 September 2013 and 28 November 2013.
2. We assume that Adv Abrahams' letter constitutes a full response to both our letters. If this is not the case he is invited to supplement his response or provide us with the letter prepared in response to our 20 September 2013 but not transmitted.
3. From the outset we note that nearly a year has elapsed from our client's request for an inquest and your predecessor's refusal. We appear to be no closer to resolution.
4. We note the point that the PCLU was only formed in 2003 and could not have attended to our client's matter prior to this year. However the TRC cases, including the Simelane case, was referred to the National Prosecuting Authority (NPA) in 2001. The NPA ought to have acted on these cases from 2001. The fact that the PCLU was only formed in 2003 is no excuse for the inaction during this period.

MN 2

5. We note with dismay that the NPA persists in claiming that the Simelane matter received attention prior to October 2010. Adv Abrahams denies that 'little of no action' was taken in the years prior to October 2010 and refers to the letter of Adv Ramaite dated 31 January 2013. The relevant paragraphs of Adv Ramaite's letter are at 6 to 9. These paragraphs disclose no investigations. Instead they set out a litany of excuses as to why no investigations took place. These are the so-called "guidelines", the Ginwala Commission, the closure of the DSO and creation of the Hawks. None of these excuses justify the NPA's idleness.
6. Adv Abrahams maintains that the Simelane matter was not referred by the SAPS or the authorities previously dealing with the TRC cases. He does not disclose who referred the case to the NPA nor does he identify the 'authorities' previously handling these matters. It is claimed that the Simelane case only came to the attention of the PCLU when the Foundation for Human Rights (FHR) made a submission to it in November 2004. It would seem that if it were not for the intervention of the FHR in 2004 the Simelane matter would never have been taken up, even though it was on the list of TRC cases originally referred to the NPA. Our client will not be persuaded that the NPA has acted diligently in this matter. The failure of the NPA to resolve this matter one way or the other constitutes monumental neglect or incompetence; alternatively it is the function of an erstwhile policy or political decision or arrangement not to pursue the "TRC cases".
7. We note that the Simelane matter was part of a broader investigation against former SAP General Engelbrecht. General Krapples Engelbrecht was implicated in organised violent crime by both the Goldstone Commission and the Truth and Reconciliation Commission. We assume that this investigation was yet another case arising from past conflicts that was abandoned by the NPA.
8. There is much irony in the fact that in the mid-2000s the then head of the PCLU resisted prosecutions in favour of an inquest only for the PCLU to resist an inquest several years later in 2013. It is correct that the family's representatives motivated for prosecutions at that time, particularly of those suspects who had

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M.J. TP 11
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not applied for kidnapping. I am advised that this was dismissed by the PCLU who did not wish to pursue "small fish". The family's representatives' advice that pursuing the small fish could lead to the conviction of more senior perpetrators fell on deaf ears. In any event it was not just "small fish" who had not applied for amnesty. The Commander of the Security Branch C1 Section under whose auspices the operation against Nokuthula took place also did not apply for amnesty. In the circumstances it is not difficult to see why my client and her family hold the view that the authorities do not wish to see justice done this matter.

9. We note that the NPA again attempts to escape responsibility for the failure to investigate on the basis that investigations are the responsibility of the police. According to Adv Abrahams the NPA played no role in the decisions to discontinue the investigations in this matter. My client does not accept this claim. It is common cause that the TRC matters (including my sister's case) were referred to the NPA not the police. The NPA accordingly had the responsibility to ensure that the cases were investigated. They failed to do so. In any event, the NPA has the authority to refer matters to the police for further investigation. Indeed it has been common practice for many years for prosecutors to direct investigations in serious or complex crime, as Adv Macadam is belatedly doing in the instant matter.
10. On the version of the NPA between November 2004 and 2010 (a period of more than 5 years) besides a few meetings between the PCLU and the representatives of the FHR nothing else was done. There was not the slightest attempt to investigate. According to my client very little happened between October 2010 and January 2013 when our client and her family finally gave up and sought an inquest.

Investigation report

11. The investigation report raises more questions than answers.

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TP 11
A.J. Wilson

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DNA analysis and exhumations

12. In relation to the DNA analysis it is not stated when the second sample was sent for testing to Bosnia. Indeed it appears it has not been obtained, let alone sent. Par 5.2 says that a second sample "will be obtained and submitted to" It is apparent from the paragraph on exhumations that as at the end of 2013, and notwithstanding our requests back in September 2013, the PCLU has no idea when the examinations will be complete. This is notwithstanding that a DNA sample was collected from my client on 4 April 2013.
13. I am advised that hundreds of unidentified remains are found each year in South Africa, many of which are of young women. Your Adv Abrahams advises that the remains could be of Nokuthula only because of the proximity of the site to the farm in Northam. Brits is situated 108 km south east of Northam; and is 68 km east of Rustenburg. A claim made before the Amnesty Committee of the TRC was that Nokuthula was taken from Northam to Westonaria via Rustenburg. Brits was not mentioned in evidence or in any statements as a place of interest in the Nokuthula matter. This exercise is accordingly a shot in the dark. While we would want the DNA from the remains of any and all young females in the wider region to be analysed, it would be pointless for the NPA to hold back from making a decision every time the remains of a young female was discovered.
14. Advocate Abrahams says that an anthropologist has made certain findings that the remains may be consistent with the missing person. Surprisingly no mention is made as to what these findings are. Since nothing was disclosed we must assume that such findings are tenuous. Strikingly, no mention is made as to whether there is evidence that the cause of death was violent. The modus operandi of the Security Branch at the time was to shoot their victims in the head. Since Adv Abrahams letter is silent on this point we must assume that there is no evidence of a violent death in respect of the remains found at or near Brits.
15. I am advised that it was wrong to have provided a photograph of Nokuthula to the facial reconstruction expert. The reconstruction should have been done independently of a photograph so as to avoid accusations that the face was

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TP 17

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MN2

reconstructed to resemble the photograph. In the circumstances any evidence arising from this work will have little evidential weight.

16. In short, as matters stand, there is no reasonable nexus between Nokuthula and the skeletal remains. There is accordingly no compelling reason to delay the finalisation of the investigation on the basis of these or other remains found in similar circumstances. In any event if new evidence does come to light from the recovery of human remains proper decisions can be made accordingly. This could include stopping an inquest and proceeding to a prosecution.

Westonaria plot

17. In respect of the plot at Westonaria it should be noted that this is not fresh news. The black Security Branch members who testified before the TRC all knew about the safe-house at Westonaria. If basic investigation had been done the plot would have been pointed out decades ago as part of routine investigations.
18. In regard to possible exhumations on this plot I am advised that several years ago the mining company that owns the plot bulldozed the then existing structures, including the building used as the "safe house", which was levelled. Unless there is specific information pinpointing an exact location there is little or no prospect of recovering remains on this plot. Since no such information has been disclosed we must also assume that this is another shot in the dark. In any event I am advised that it would take an experienced specialist anthropologist a few hours to determine the feasibility of an exhumation.
19. Again, a possible exhumation on this plot should not be a reason for any additional delay, unless there is specific and detailed information about the exact location of a grave.

Mortuary Records

20. An inspection of mortuary records was made in 1996 by Captain Leask, which included the Rustenberg Mortuary. No connections were made between any

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TP 7

M. J. Miso

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records and Nokuthula. Towards the end of 2013 it is now said that some incomplete and obscure records are possibly linked to this case. Again there is no reason why such a study could not have been conducted many years ago. While these apparent connections should be explored they also constitute shots in the dark and should not hold back the taking of a decision.

21. It is becoming increasingly apparent that the PCLU will delay making a decision on this matter on the basis of the most tenuous lines of inquiry.

Monthly Reports

22. If monthly reports are to be given they should be sufficiently detailed so as to be meaningful. Vague comments such as, "an anthropologist has made certain findings that the skeletal remains may be consistent with the missing person" without stating the findings are not helpful. The bulk of what is said in the October to December report is equally vague and unhelpful.
23. The monthly reports should be substantive, accurate and contain all relevant information not just suggestions or hints on progress in respect of the investigation.

Reasons for not holding an inquest

24. Quite remarkable reasons are given as to why an inquest should not be held at this time.
25. It has been demonstrated above that the outstanding investigations are shots in the dark and are not 'key outstanding investigations' as claimed by Adv Abrahams. In fact the Investigating officer, Captain Masehela, who submitted his report to Adv Macadam in July 2011 recommended an inquest, which recommendation was ignored.
26. It is noted that the setting up of an inquest in the High Court could take several months. During this period outstanding investigations could be finalized. If any of

11

TP 17

M. J. Mason

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these lines of inquiry resulted in evidence warranting a prosecution such a decision could be taken and effected. Should this happen the Inquest will not be proceeded with; and if it has commenced, it can be stopped in terms of section 21(2) of the Inquest Act.

27. While we accept that there may be potential prejudice to witnesses who have to testify in two fora we note that this was of no consequence to the PCLU in the 2000s who were pushing for an Inquest at that time. Our instructions are that the interminable delay is of even greater prejudice to witnesses and our clients.

October to December report

28. The October to December report suggests that there is no end in sight. There is simply no reason why these matters could not have been pursued and resolved in the 12 months since my client sought an Inquest.
29. We note that Adv Macdam identified these matters as investigational tasks back in 2010. It is quite apparent that little or no progress has been made on these tasks over the past three years and they remain as "work to be done". Many of these tasks are simple and basic and there is absolutely no reason why they should not have been quickly completed.
30. It is worth mentioning that other tasks identified by Adv Macadam in his 2010 letter of 2010 seem to have dropped off the list. No indication has been given whether these tasks were completed.
31. I have taken instructions from my client in respect of the requests made by Adv Abrahams in paragraph 8 of his letter. My client is not in possession of any of the records of the amnesty hearing. My client advises that members of her family did collect Nokuthula's belongings from the Duma Nkosi home in Soweto in late 1983 or early 1984. Unfortunately they cannot recall collecting a passport from amongst her clothes and other belongings. My client's mother advises that Nokuthula was a dual citizen of South Africa and Swaziland and possessed

12

TP M

M. J. Ngweni

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passports for both countries. Nokuthula apparently used her Swaziland passport on her last few trips.

32. In respect of the holding of a meeting we had requested a meeting with the NDPP. My client and her representatives have met with the PCLU over the years and such meetings have proven to be utterly fruitless. We see no point in holding another meeting with the PCLU. We persist with our request for a meeting with yourself. The purpose of such a meeting would be to request an imposition of a reasonable time limit on the investigations and for the taking of a decision whether to prosecute or not. If a decision cannot be taken within a reasonable time period then this matter must be referred to a formal inquest in the High Court. We would submit that, in the circumstances of this case, a reasonable time period would be a matter of weeks not months.
33. Kindly advise per return whether you are willing to meet with us, and if so, the soonest date for such a meeting. If a meeting in the near future is not possible, then please advise whether you are willing to bring this matter to finality within a reasonable period as described above.
34. We look forward to hearing from you.

Yours sincerely



Legal Resources Centre, Constitutional Litigation Unit, Johannesburg
Bongumusa Sibiyi

Copy to: Advocate Chris Macadam
Priority Crimes Litigation Unit
By fax: (012) 845 6337
Email: cmacadam@npa.gov.za / hzwart@npa.gov.za

And to: Advocate S K Abrahams
Acting Head: Priority Crimes Litigation Unit
Office of the National Director of Public Prosecutions
By fax: (012) 845 6337

13

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2018
P. 108

* * * Communication Result Report { 16. Jan. 2014 11:05 } * * *

1} LEGAL RESOURCE CENTER

Date/Time: 16. Jan. 2014 11:00

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You did
 Our Ref: Our Ref: 15 0000

The Acting National Director of Public Prosecutions
 National Prosecuting Authority
 Private Bag X762
 Pretoria
 0001

By fax: 012 845 7201

16 January 2014

Dear Mr. Mrazana

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NONUTHULA
 AURELIA SHIMANE (PRIORITY INVESTIGATION IN PLEIN 148000000)**

1. We refer to the letter of Adv S K Abramo, Acting Director of the Priority Crimes Litigation Unit (PCLU), dated 8 December 2013 and received on 9 December 2013, in response to our letters dated 20 September 2013 and 28 November 2013.
2. We assume that Adv Abramo's letter constitutes a full response to both our letters. If this is not the case he is invited to supplement his response or provide us with the letter prepared in response to our 20 September 2013 but not transmitted.
3. From the outset we note that nearly a year has elapsed from our client's request for an inquest and your predecessor's refusal. We appear to be no closer to resolution.
4. We note the point that the PCLU was only formed in 2003 and could not have attended to our client's matter prior to this year. However the TRC cases, including the Shimane case, was referred to the National Prosecuting Authority (NPA) in 2001. The NPA ought to have acted on these cases from 2001. The fact that the PCLU was only formed in 2003 is no excuse for the inaction during this period.

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TP 12

M. J. MBO

Office of the National Director of Public Prosecutions



31 January 2013

Ms TP Nkadameng
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Pretoria
0181

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
(Weavind Park
Silverton

Fax: (012) 421 3516

Email: nkadameng.thembi@gmail.com

Dear Ms Nkadameng

REQUEST FOR THE HOLDING OF A FORMAL INQUEST IN TERMS OF SECTION 5 OF THE INQUESTS ACT 58 OF 1959 IN RESPECT OF THE KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)

P/Bag X752
Pretoria
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Tel: (012) 845-6000
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1. I acknowledge receipt of your letter, dated 29 January 2013 and at the outset express my extreme sympathy for the suffering you and your family have experienced due to the unresolved disappearance of your sister. The purpose of my communicating with you is to explain fully all the relevant facts relating to your sister's disappearance so as to allay your criticisms levelled at the PCLU. Your case has and will continue to receive diligent attention by the NPA. As will be explained hereunder, it is not possible to hold an inquest prior to the conclusion of the outstanding investigations, which must be conducted by the DPCI.
2. Although your sister disappeared in September 1983, the first information identifying suspects was only received by SAPS in 1996.
3. When the TRC was established, SAPS elected to put on hold all investigations where amnesty application had been lodged. Your sister's matter was one such case.
4. The judgment of the Amnesty Committee was only released in May 2001.



5. When the PCLU was established in 2003, the National Director referred all TRC cases to it.
6. It is correct that the TRC cases were temporarily put on hold pending the formulation of guidelines. This was because it was deemed important that special considerations applied to these cases.
7. Your application to have the provisions (which you state constituted a second amnesty process) set aside, resulted in the Court declaring the whole guidelines unconstitutional, including the mechanisms creating structures for the investigation of such cases.
8. When the President established the Ginwala Commission, SAPS declined to further investigate the matters, pending the conclusion of the Commission. One of the matters falling within the terms of reference of the Commission was the manner in which TRC cases were dealt with by the NPA.
9. The dissolution of the DSO, the establishment of the DPCI and the redefining of the mandate of the detective service did unfortunately hamper efforts to have your case investigated.
10. In early 2010, Adv Macadam was appointed by the Acting National Director to take over all the matters and to liaise directly with the DPCI, following an agreement reached between the NPA and General Dramat.
11. I enclose a copy of Adv Macadam's letter of 25 March 2010, addressed to the Unit Commander of the DPCI, who had been mandated to investigate TRC cases. As emerges from the letter, Adv Macadam did specifically request that the issue of prosecuting Detective Inspector Radebe be investigated. As is also clear from the letter, the NPA at that stage merely had a duplicate docket and it was obviously essential that the original docket and other evidence be located.
12. Captain Masegela was appointed to investigate the matter and in late 2010 submitted a docket to Adv Macadam. I enclose a copy of a letter, dated 27 October 2010, written by Adv Macadam to Captain Masegela, requesting an extensive number of all-embracing investigations. Yet again, the role of Detective Inspector Radebe was emphasised. As is evident from the investigations requested, your sister's case had obviously not been fully investigated, either by the TRC or by SAPS. It is also clear that it would not be possible to quickly finalise the investigation, because of the issues required to be canvassed.
13. It is correct that the PCLU declined to institute a prosecution on the Customary International Law crime of torture and on a

charge of attempting to defeat the ends of justice. The two letters, written by Adv Macadam, however demonstrate that the request that consideration be given to the prosecution of Detective Inspector Radebe, was acceded to.

14. It is the view of John Dugard, one of the world's leading experts in the field of International Law, that international crimes require domestic legislation before they can become enforceable in South Africa. The Constitutional Court, in the *Wouter Basson* matter, also specifically refrained from directing that he be charged for Geneva Convention crimes and in fact limited his potential prosecution only to offences under the Riotous Assemblies Act. The domestic Rome Statute, which criminalises certain international crimes, specifically prohibits prosecutions for such offences committed prior to the enactment of the Statute. The Torture Convention Bill also makes no provision for retrospective criminalisation. The PCLU's decision not to institute a prosecution on a charge of torture was correct. Only a charge of assault with intent to do grievous bodily harm could have been considered, but such crime had prescribed in 2003.
15. The person who alleged that he had been influenced to change his version was deceased even prior to the amnesty hearing. The tape recordings were lost while in police custody. There could therefore be no basis for a prosecution and in addition, charges of defeating the ends of justice would have prescribed in 2006.
16. The docket was not submitted to the PCLU in July 2011 under cover of a report, let alone one as required in terms of Section 4 of the Inquests Act. In fact, the docket was re-submitted with a substantial number of the original investigations not having been conducted and no evidence establishing that your sister was murdered.
17. Rather than requesting that the outstanding investigations be conducted at that stage, Adv Macadam explored a number of other options, aimed at trying to establish that your sister was in fact murdered by the Security Branch:
 - 17.1 In a statement, dated May 2011, the original investigating officer indicated that he had been instructed to hand over the docket to Captain Holmes so that it could be part of an investigation against General Engelbrecht. The original docket when located contained no statements taken by Captain Holmes and it was established that he had passed away many years previously. A perusal of the D'Oliveira material failed to reveal any record of investigations conducted by him into your sister's case. It was established that an investigation into General Engelbrecht was conducted, but that the Director of

Public Prosecutions: Pretoria declined to prosecute and the National Director concurred with this decision. That investigation contained no evidence referring to your sister's disappearance and murder.

- 17.2 A matter completely overlooked by both the TRC and SAPS was the claim by three of the suspects that bombings of two power stations and a railway line and the arrest of Justice Ngidi confirmed their version. After an extensive search, the dockets relating to the bombings were located and in fact found to contain evidence which would have been materially relevant at the time of the amnesty application. It was however further established that a separate committee of the TRC granted the persons involved in the bombings amnesty. The docket relating to Justice Ngidi could not be located; however, other evidence was obtained which indicated that he was arrested at a different time as alleged by the suspects.
- 17.3 The discovery of this additional evidence led Adv Macadam to conclude that your sister may have been in fact murdered on the farm. He requested the Missing Persons' Task Team (MPTT) to look into the possibility of conducting an exhumation. A senior international forensic anthropologist however advised that an exploration of the farm should only take place in spring before the summer re-growth of vegetation, but when the ground was again moist after spring rains.
- 17.4 As an interim measure, the MPTT commenced inspecting mortuary records with the aim of locating cases which matched the description of your sister. This has led to a process of retrieving various inquest records relating to unidentified persons. Once all the records have been obtained, they will be placed before Adv Macadam in order for him to decide whether any of them relate to your sister.
- 17.5 Although the exploration of the farm was conducted in October 2012, the report from the MPTT was only made available on 25 January 2013. This was because the MPTT explored every possible option which could lead to the identification of the burial site. All these options however were too of no avail and the MPTT has concluded that no exhumation is feasible in the absence of clear evidence as to a specific burial site.
18. The docket was only resubmitted to the PCLU late last week, again containing no further statements, save for the report of the MPTT. The allegation that Ms Fullard advised you to approach the suspects is disputed by her. In any event, I would not
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authorise any such conduct, as this would not be conducive to the interests of justice.

19. The docket has been carefully perused by Adv Macadam and a Senior State Advocate and is in the process of being re-submitted to the investigating officer with an instruction that all outstanding investigations be concluded without further delay.
20. Only after the matter has fully been investigated can Adv Macadam, in consultation with the relevant Directors of Public Prosecutions, make a properly informed recommendation as to whether a prosecution can be instituted or not. The decision rests with me.
21. The placing of the existing statements before a Magistrate would not serve any useful purpose, because the Magistrate would be constrained not to hold an inquest until the matter has been properly investigated
22. Insofar as you request that the inquest be held in the High Court is concerned, the Inquests Act requires that the Minister approach the Judge President of the relevant division to appoint a Judge. I cannot request the Minister to exercise these powers in the absence of a fully investigated case.
23. As the evidence currently stands, there is confusion as to where your sister was last seen alive and consequently, Section 6(3) of the Inquests Act may apply, which requires that the Minister appoint a specially designated Magistrate. This provision also could not be invoked in the absence of a fully investigated case.
24. Insofar as you also request the appointment of a special prosecutor in consultation with your family, I am of the view that this would impede on the independence of the NPA, because in certain cases, the Courts have set aside appointments of prosecutors where there is a connection to the complainant.
25. I trust that the above reassures you that the matter is receiving proper attention. You will be informed when the matter has been investigated and a decision taken. In the event of the decision being taken to hold an inquest, the various provisions of the Inquests Act will be invoked to ensure that it will be a formal one.

Yours sincerely


DR MS RAMAITE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

[Handwritten mark]

9. Dec. 2013 11:53

No. 0755

P.

TN 518

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Priority Crimes Litigation Unit



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Constitutional Litigation Unit
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5 December 2013

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Dear Sir/Madam

KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA SIMELANE

1. I acknowledge receipt of your letter, addressed to the Acting National Director, dated 28 November 2013, which was brought to my attention on 4 December 2013.
2. I must however apologise to you for not forwarding a reply to you in response to your letter of 20 September 2013. A reply and a progress report were prepared, but due to other pressing commitments, were not forwarded to you prior to the arrival of your latest letter.
3. Due to the contents of your latest letter, I deem it unnecessary to respond to the issues raised in the letter of 20 September 2013, but my failure to respond should not be construed as an admission of any of the facts stated therein.
4. I wish to correct your claim that the police docket was referred to the PCLU in 2001. The PCLU was only created by Presidential Proclamation in March 2003 and officials only assumed duty in either July or August of that year. The investigation initiated by then Captain Leask was not referred by SAPS to the PCLU. It is also not correct that little or no action was taken in this matter.

TP 17



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"Together beating the
drum for service delivery"



until earlier this year. This issue was comprehensively dealt with by Dr Ramaite SC in his communications with your client earlier this year.

5. I respond to your queries raised in para 4 of your letter as follows:

5.1 Ad para 4.1: Failure to hold an inquest between 2001 and 2010

5.1.1 Shortly after his appointment in late 1998, Mr Ngcuka, the then National Director, established a TRC component within his Head Office to attend to prosecution-related matters arising from the TRC. The majority of the amnesty judgments had not been delivered at that time (including the case of your client) and the unit was disbanded in 2001. Captain Leask was instructed by his superiors to suspend his investigation and surrender his docket to Captain Holmes so that the matter could be investigated as part of a larger case against former SAPS General Engelbrecht. Captain Holmes appears not to have investigated your client's case further and his unit was thereafter disbanded and he subsequently died of cancer.

5.1.2 In 2003, the work of the TRC Amnesty Committee was concluded and once the PCLU had become operational, Mr Ngcuka referred the TRC cases to it.

5.1.3 Your client's case was not referred to the PCLU by the authorities who had previously been responsible for the investigation and prosecution of TRC matters, despite a request by the PCLU that all outstanding cases requiring decisions whether or not to prosecute should be referred to it.

5.1.4 It would appear that this matter was brought to the attention of the PCLU in November 2004 when a submission was made by the Foundation for Human Rights (who at that stage represented your client) that the persons who were refused amnesty should be prosecuted. This was taken forward by way of a recommendation in March 2006 that consideration be given to the customary international law crime of torture.

TP 07

5.1.5 I have been advised that several discussions took place between Adv Ackermann SC, the then Head of the PCLU and representatives of the Foundation. In this regard I have been further advised that although at one stage Adv Ackermann SC raised the issue of holding an inquest, this was resisted by the Foundation who then proposed that Sergeant Radebe be prosecuted for kidnapping.

5.1.6 Obviously, consideration to the institution of a prosecution could only be conducted on the basis of a fully investigated police docket. It is clear that Captain Leask had not concluded his investigation and that no further investigations were conducted thereafter. The NPA had no role to play in these decisions. Dr Ramaite SC has explained in his letters to your client why the necessary investigations were not conducted by the relevant law enforcement agencies once the PCLU had become seized with the matter.

5.1.7 As is clear from the instructions given by Adv Macadam when he became seized with the matter, he required the matter to be properly investigated, including the issue of Sergeant Radebe's role in the kidnapping. These investigations have been in progress since October 2010. The holding of an inquest would only be appropriate once a decision whether or not to prosecute had first been taken.

5.2 Ad para 4.2: DNA analysis

A DNA sample was retrieved from the skeletal remains found in the Brits area in April 2013 for comparison with the sample provided by your client. In June 2013, the SAPS laboratory indicated that the sample retrieved from the remains contained inadequate DNA material for comparison purposes. The Head of the SAPS laboratory has however indicated that a second sample will be obtained and submitted to a specialist DNA laboratory in Bosnia, which specialises in DNA analysis relating to bones which are of archaeological significance. The results of the second analysis are still awaited.

5.3 Ad para 4.3: Exhumation-related issues

During the course of a routine excavation in the Brits area, the skeletal remains were found by contractors. In the opinion of

TP 17

the investigating officer and his commander, the remains could be those of Nokuthula Simelane due to the proximity of the site to the farm where she was detained and tortured. The remains were submitted to an anthropologist who made certain findings which may be consistent with the missing person. However, SAPS has been requested to provide a more comprehensive case history in order to establish whether the anthropologist can make more specific findings. In addition, photographs of Nokuthula Simelane taken shortly before her disappearance have been provided to a facial reconstruction expert for forensic investigation. The PCLU has requested a meeting with the Head of the SAPS Forensic Laboratory in order to determine when all the outstanding examinations may be concluded.

5.4 Ad paras 4.5 and 4.6: Westonaria Plot

The plot in question was pointed out by a former police undercover agent, who was involved in your client's case. Certain investigations were conducted by the NPA's Missing Persons' Task Team (MPTT). A recommendation has been made that the plot be inspected by a specialist anthropologist to determine the feasibility of an exhumation. This aspect must be taken up further by the SAPS Victim Recovery Unit and the necessary direction given to SAPS in this regard.

5.5 Ad para 4.7: Mortuary Records

The MPTT was requested to peruse the records of all mortuaries in areas which have relevance to your client's case. The criteria applied were unidentified females (corresponding with the race, gender and age of the missing person) who had been admitted to the mortuaries during the period of her disappearance and detention. Only the Krugersdorp mortuary (located midway between other key areas, e.g. Westonaria, Soweto, Northam, etc) revealed entries consistent with the criteria set. The records however do not have police reference numbers and the post mortems are illegible. An enquiry directed to the Police Photographic Units established that no photographs were taken at that mortuary at that time. A request has however been made to the SAPS Victim Recovery Unit to canvas the possibility of being able to locate the graves in question and if this is possible, to take a DNA sample from each grave. If a positive connection was made with the sample provided by your client, then obviously that grave will be exhumed.

TP 17

5.6 Ad para 4.8: Monthly reports

I have already explained why the October report was not provided. I have no record of Legal Resources Centre acting on behalf of your client from February 2013. Adv Macadam was contacted by Adv Palmer, who informed him that he represented your client. From that date, there were ongoing meetings, email communications and telecoms between the two advocates where progress with your client's case was reported on and discussed.

5.7 Ad para 4.9: Reasons for not holding an inquest

I will respond to these issues hereunder.

6. I am prepared to meet with you and would request you to provide me with proposed dates so as to enable me to decide when I can accommodate you. My view is that the outstanding investigations should be concluded in early 2014 and that the holding of an inquest should be held over until the decision whether to prosecute or not has been taken. In terms of the Inquests Act, an inquest is only held when a prosecution on a charge relating to the death of a person is not instituted. I am of the view that the following factors would indicate the inappropriateness of holding an inquest prior to the conclusion of the investigations and the decision being taken:
 - 6.1 A judicial officer would not be inclined to hold an inquest in the absence of a decision not to prosecute and on the basis of an affidavit by the investigating officer that there are key outstanding investigations. Section 4 of the Inquests Act in any event requires that a prosecutor request further information if he/she is not satisfied with the police investigation.
 - 6.2 All the persons (including those who submitted witness statements), who were involved in the kidnapping and torture are entitled to legal representation and to decline to answer incriminating questions. It is only to be expected that their lawyers would object to the commencement of the inquest prior to the investigation being concluded.
 - 6.3 The investigating officer would be seized with the inquest and be unable to continue with his investigations.
 - 6.4 Were an inquest to commence, there would be frequent postponements due to all the outstanding issues.

TP 17

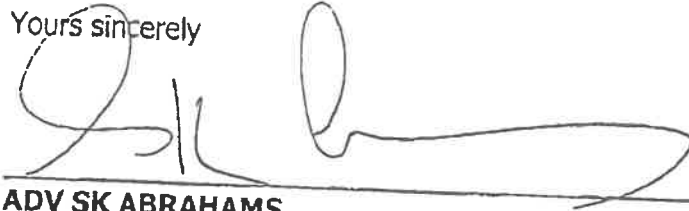
- 6.5 Were a prosecution to be instituted, the witnesses would be prejudiced, as they would then be subject to cross-examination in two *fora* on the same issues.
7. I provide the following further information by way of a progress report covering the period October to December 2013:
- 7.1 I have already dealt with the issues relating to the skeletal remains found in Brits, the mortuary entries and the Westonaria plot. The SAPS has been requested to address and expedite the outstanding issues relating to these matters. If positive, these investigations could establish that the missing person never returned to Swaziland and would have a serious impact on the version of certain of the amnesty applicants.
- 7.2 The archive records relating to the persons, whom certain of the applicants claim were arrested as a result of the information provided by the missing person, have been retrieved and carefully perused. The investigating officer has been requested to trace the relevant persons and to obtain comprehensive statements relating to this issue. Where the persons' versions can be verified by the authors of the State documentation retrieved, then those former State officials should also be traced and affidavits obtained from them.
- 7.3 Additional statements have been requested from certain of the State witnesses arising from material now obtained.
- 7.4 Photograph albums and maps of the relevant scenes have also been requested.
- 7.5 A proper search of the State Archives has revealed that documentation referred to during the course of the amnesty hearing cannot be located. However, additional statements taken either by the TRC or SAPS, which appear not to have been before the committee, have been found and the contents of those statements require investigation.
8. As indicated, key evidence relating to the amnesty hearing is no longer available. The records reflect that an Adv van den Berg represented your client at the hearing. If your client is in possession of any of the records relating to the amnesty hearing, it would be appreciated if these could be made available to the Investigating officer in order to establish whether the missing

TP 09

documents can be traced. Further evidence available to the investigating officer is that your client's family collected Nokuthula Simelane's passport from Mr Duma after her disappearance. If the family is still in possession of the passport, it would be appreciated if this could be made available to the investigating officer, as it contains highly relevant information.

9. I therefore await your communication regarding a meeting.

Yours sincerely



9/12/2013

ADV SK ABRAHAMS
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
AND ACTING HEAD: PRIORITY CRIMES LITIGATION UNIT
OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS

TPD