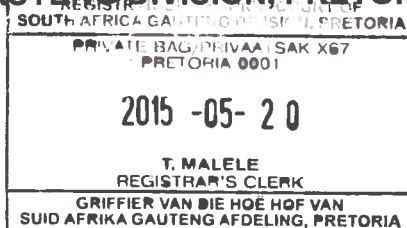


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

**NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

First Respondent

**THE NATIONAL COMMISSIONER OF
THE SOUTH AFRICAN POLICE**

Second Respondent

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

 IN CAMERA FOUNDING AFFIDAVIT

TP 9

I, the undersigned

THEMBISILE PHUMELELE NKADIMENG

state under oath as follows:

INTRODUCTION

1. I am the applicant herein. In my founding affidavit I attach certain correspondence which should remain confidential at this stage. These include annexes **TN13** to **TN14** which are letters from the investigating officer to various officials. Under the heading "Attempts to seek justice" I set out a timeline which provided an overview of the steps taken so far, including some of the interactions between myself, my representatives and the authorities.
2. Since several of the documents referred to in the timeline include correspondence between my attorneys and the NPA and SAPS, as well as extracts from the police docket, I have not attached these annexes to my open court affidavit. They are attached to this affidavit. The investigative timeline is reproduced below. The documents which are attached to this affidavit are numbered **TN21.1** to **TN21.23**. They appear in the rows in the table below shaded grey.
3. This affidavit will only be served on the first respondent as it is already in possession of the documents attached to this affidavit. The registrar will be requested to hold this affidavit and its annexes as part of an *in camera* record, which is not to be released to the public, unless authorised by this Honourable Court.

Investigative Timeline

Date	Action	Reference
11 September 1983	Nokuthula Simelane is kidnapped by member of the Security Branch of the South African Police.	TRC Amnesty Committee Finding AC/2001/185 Abduction and Torture of Nokuthula Simelane. (Annex TN10)

TP 9

11 Sept. to about mid-October 1983	Nokuthula Simelane is secretly kept captive in a store room on a farm at Northam where she is persistently tortured by members of the Security Branch.	TRC Amnesty Committee Finding AC/2001/185 Abduction and Torture of Nokuthula Simelane.
About mid- October 1983	Nokuthula Simelane is secretly taken from the farm at Northam by members of the Security Branch and has not been seen again.	TRC Amnesty Committee Finding AC/2001/185 Abduction and Torture of Nokuthula Simelane.
27 January 1996	Sowetan newspaper published a story about Nokuthula's disappearance and made an appeal for information.	Sowetan newspaper dated 27 January 1996 (Annex TN11)
January/ February 1996	Former Security Branch policeman Sergeant M M Veyi provided evidence to the TRC Amnesty Committee about the abduction, torture and disappearance of Ms. Simelane	1. TRC Amnesty Hearing AC/2001/185 – 2. Evidence of former Sergeant Veyi. (Annex TN22) 3. Sowetan news report.
February 1996	In consequence to the disclosures by former Sergeant Veyi CAS1469/02/1996 Murder case docket was opened and investigated by "Priority Crimes Unit" based at John Vorster Square (now Johannesburg Central Police Station). The case was assigned to Captain Leask. Initial investigation made progress but before its conclusion the case was transferred to the D'Oliviera Team towards the end of 1996. Little or no further investigation is undertaken by the D'Oliviera Team until matter is taken over by the TRC.	1. Extracts from docket. (Annex TN21.1) 2. Letter from PCLU, 5 December 2013 (Para 5.1.6) (Annex TN21.2)
1996 - 1997	Police (D'Oliviera Team) investigation put on hold pending the TRC process.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013, paragraph 3. (Annex TN21.3)
3 June 1997	Commencement of Amnesty Hearing of TRC into the disappearance of Nokuthula Simelane. Following persons make applications for amnesty for abduction, torture and other related crimes. None of the applicants applied for amnesty in	TRC Amnesty Hearing AC/2001/185

TP 9

	respect of the murder of Ms Simelane. W H Coetzee (TRC ref. AM4122/96) A Pretorius (TRC ref. AM4389/96) J F Williams (TRC ref. AM4375/96) J E Ross (TRC ref. AM4377/96) F B Mong (TRC ref. AM4154/96) N L Mkhonza (TRC ref. AM5420/97) M M Veyi (TRC ref. AM5421/97) M L Selamolela (TRC ref. AM5419/97)	
1998	NDPP Ngcuka establishes TRC component within NPA Head Office to attend to prosecution matters arising from TRC.	Letter from PCLU, 5 December 2013. Para 5.1.6 (Annex TN21.2)
February 1999	Meeting between TRC and NPA to discuss a process of establishing mechanisms for identifying potential cases.	"Report for the Office of the National Director of Public Prosecutions dated 7 March 1999. (Annex TN23)
11 March 1999	TRC commences referrals for potential prosecution to NPA – alerting them to sources of evidence to crimes. Correspondence does not specify any particular cases.	"Report for the Office of the National Director of Public Prosecutions dated 7 March 1999. (Annex TN23)
30 June 2000	Final session of Amnesty Hearing of TRC into the disappearance of Nokuthula Simelane	TRC Amnesty Hearing AC/2001/185
23 May 2001	TRC Decision issued in this Simelane matter. All applicants are granted amnesty for the abduction of Ms Simelane; applicants W.H Coetzee, A Pretorius and F B Mong are refused amnesty for torture; applicants M M Veyi and M L Selamolela are granted amnesty for the torture of Ms Simelane.	TRC Amnesty Hearing Decision AC/2001/185 (Annex TN10)
29 August 2001	The TRC Amnesty Committee decision in the Simelane matter is gazetted.	Proc 31. Justice 29/08/2001
12 March 2003	Volumes 6 and 7 of the TRC Report are published.	TRC Report

TP 9

12 March 2003	Specific mention is made in the TRC Report on Nokuthula Simelane's abduction, torture and disappearance. Volume 2, Chapter 3 para 278 - 280; 287 – 292 Volume 6, Chapter 1 para 194 – 206 Volume 6, Chapter 2 para 50 – 71 Volume 7, Victims list	TRC report . (Extracts annexed as TN24 - 27)
23 March 2003	PCLU is created by Presidential Proclamation. Officials assume duty July/ August.	1. Presidential Proclamation (Annex TN28) 2. Letter from PCLU, 5 December 2013. (Annex TN21.2)
2003	The South African President directed the NDPP to give attention to the cases of 500 persons who had been reported missing by the TRC. NPA established a Task Team to evaluate the TRC report and to identify cases for investigation. 150 cases were identified for immediate investigation.	About PCLU (Annex TN29)
2003	NPA TRC Unit is converted into Priority Crimes Litigation Unit (PCLU)	Letter from PCLU, 5 December 2013. (Annex TN21.2)
2003	The NDPP give attention to the cases of some 500 persons who had been reported missing by the TRC. A Task Team evaluates the TRC Report to identify cases for investigation. Approximately 150 cases were identified for immediate investigation. The disappearance of Nokuthula Simelane is one of these cases.	About PCLU (Annex TN29)
2003	The PCLU requests all outstanding cases to be referred to it.	Letter from PCLU, 5 December 2013 (Annex TN21.2)
2003	NPA and PCLU place TRC cases "on hold" awaiting formation of policy on the TRC cases.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013, paragraph 6. ((Annex TN21.3))
November 2004	Foundation for Human Rights make submission on behalf of family re prosecutions of persons refused amnesty.	Letter from PCLU, 5 December 2013, para 5.1.4. (Annex TN21.2)

TP 9

2004 and 2005	Several discussions between FHR and PCLU (Advocate Anton Ackerman) about charges arising from the alleged torture of Ms Simelane (in terms of International Law); the prosecution of Sergeant Radebe on kidnapping charges and the possibility of holding an Inquest into this matter.	Letter from PCLU, 5 December 2013, para 5.1.5. (Annex TN21.2)
1 December 2005	NPA issues Guidelines for TRC cases in terms of National Prosecution Policy sec.179(5) of the Constitution	Appendix A, National Prosecution Policy dated 1 December 2005. (Annex TN30)
23rd September 2007	Establishment of Ginwala Enquiry into the fitness of Advocate Pikoli to hold the office of NDPP	Ginwala Enquiry Report dated 4 November 2008 (Available on request)
2007/8	Decision by the SAPS not to investigate TRC cases pending conclusion of Ginwala Commission.	Letter from Dr. Ramaite, Acting NDPP, 31 January 2013, para 8. (Annex TN21.3)
4 November 2008	Ginwala Enquiry into NDPP finalised and issues report.	Ginwala Enquiry Report dated 4 November 2008 (Available on request)
2 December 2008	Amendments to Prosecution Policy struck down	Judgment, Nkadimeng & Others v The National Director of Public Prosecutions & Others, T.P.D. Case no. 32709/07. (Available on request)
Early 2010	Advocate Macadam appointed by Acting NDPP to take over TRC matters and to liaise with the General Dramat Commander of DPCI.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013 paragraph 10. (Annex TN21.3)
March 2010	Duplicate Docket and TRC material requested from State Archives and made available to PCLU.	Letter from Acting NDPP, Adv Jiba, 13 August 2013, p3 (Annex TN21.4)
25 March 2010	1. Duplicate Case Docket forwarded to Superintendent Bester of DPCI by PCLU requesting investigation to determine availability of witnesses; confirmation of statements; and to determine the position of Timothy Radebe	1. Letter from Advocate Macadam of NPA, Deputy Director of Public Prosecutions and Deputy Head of PCLU to Senior Superintendent Louis Bester, dated 25 March 2010

TP 5

	(whether he is a witness or a suspect) 2. Police Captain Masegela of DPCI was appointed to investigate matter	(Annex TN21.5) 2. Letter from Dr. Ramaite Acting NDPP dated 31 January 2013 paragraph 12. (Annex TN21.3)
October 2010	Captain Masegela of DPCI returns duplicate docket and other files and material to Advocate Macadam	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013 paragraph 12. (Annex TN21.3)
27 October 2010	Letter from Advocate Macadam to Captain Masegela (together with duplicate case docket; other files and material) with a directive for extensive further investigations. These are inter alia: • Various administrative tasks related to case files. • Checking the alibi of Sergeant Radebe and circumstances of his original statement. • Investigation concerning an undercover operation involving a tape recording. • Statements from identified witnesses. • Establish circumstances of deaths of certain witnesses. • Draw crime scene maps and plot points of relevance. • Establish the circumstances of the arrests of the 18 MK Operatives. • Establish the circumstances and facts of the "false flag" operations. • Trace and interview Brigadier Schoon. • Identify members of Eastern Transvaal Security Branch at relevant time. • Interview Sipiwe Nyanda – MK Commander in Swaziland. • Establish whether there is any relevant information from the Swaziland authorities.	Letter from Advocate Macadam of NPA, Deputy Director of Prosecutions and Deputy Head of PCLU dated 27 October 2010 (Annex TN21.6)

TP 5

	• Investigations concerning Motsoanyame Commission and its findings. • Explore the possibility of an exhumation at Northam farm. • Investigations concerning safe houses and other properties with a view to conducting exhumations. • Witnesses who have already made statements to confirm these and be re-interviewed.	
October 2010 (date not specified)	Missing Persons Task Team (MPTT) requested to explore the farm at Northam for possible exhumation and to check mortuary records for possible leads in respect of remains of Ms Simelane.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013 paragraph 17.3 (Annex TN21.3)
Late 2010 (date not specified)	Original docket located	Letter from NPA, Acting NDPP, Advocate Jiba dated 13 August 2013 page 3 sub paragraph vii. (Annex TN21.4)
July 2011	The investigating officer, Captain Masehela, submitted his report to Adv Macadam recommending an inquest.	Thembi Nkadimeng discussion with Captain Masegela
October 2012 (date not specified)	Exploration by MPTT of farm at Northam completed and they conclude there is no possibility of an exhumation in the absence of specific evidence of a burial site. MPTT report issued on 25 January 2013.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013 paragraph 17.5 (Annex TN21.3)
22 January 2013	1. Captain Masegela returns docket and provides report in terms of Sec. 4 of the Inquest Act to Adv. Macadam 2. NPA denies that the docket was returned with the required certificate for an Inquest and claims that docket was returned with a substantial amount of the original investigations incomplete, and no evidence establishing that Ms. Simelane had been murdered.	1. Information supplied by Captain Masegela to Thembi at a meeting 2. Letter from Dr. Ramaite Acting NDPP dated 31 January 2013, para 16 (Annex TN21.3).

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25 January 2013	Letter from NPA claiming matter has been diligently attended to and investigations are continuing.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013, paragraph 17.5 (Annex TN21.3)
25 January 2013	Letter from NPA claiming matter has been diligently attended to and investigations are continuing. MPTT report made available to PCLU on exploration of Northam farm and finding that exhumation is not possible unless there is specific evidence of the precise burial place.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013, paragraph 17.5 (Annex TN21.3)
29 January 2013	The holding of an inquest is requested by family as authorities are not making progress in their investigation into determining circumstances of death.	Inquest Request – letter from T.P. Nkadameng to NPA dated 29 January 2013 (Annex TN20)
31 January 2013	NDPP says that Macadam is perusing docket and resubmit to investigating officer.	Letter from Dr. Ramaite Acting NDPP dated 31 January 2013 (Annex TN21.3)
11 February 2013	Letter from the applicant pointing out that this matter has not been diligently attended to and calling for a prosecution or an inquest. To this end a meeting has been arranged between family representatives and Adv. Macadam to discuss and determine how the investigation can be completed and to set a reasonable deadline for this work to be completed.	Inquest Request – copy of letter from T.P. Nkadameng to NPA dated 11 February 2013 (Annex TN21.7)
12 February 2013	NDPP reasserts that a decision can only be taken once investigation has been completed and refers to the upcoming meeting on 18 February 2013 between members of his staff and families representatives to discuss the investigative steps that are being taken.	Letter from Dr. Ramaite Acting NDPP dated 12 February 2013 (Annex TN21.8)
13 February 2013	Macadam of PCLU instructs Col Xaba of DPCI to undertake following investigations: • Trace and interview Nompumelelo Zakade who was a SB informant. • Locate “safe houses” to determine if exhumations are feasible.	Letter from Adv. Macadam to Colonel Xaba of DPCI dated 13 February 2013 (Annex TN21.9)

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	• Locate safe house that was used by Strongman Bambo to determine if exhumations are feasible. • Interview Siphiwe Nyanda	
18 February 2013	Meeting between Adv. Macadam (PCLU) Susanne Bukau (PCLU) Colonel Xaba (Hawks) Captain Masagela (DPCI) and Adv. Palmer, Alan Wallis (SALC) (the last two mentioned representing family). Agreement that investigative tasks as set out in PCLU letter to DPCI dated 27 October 2010 is incomplete but there will be an endeavour to conclude investigation by end of May 2013.	1. Letter from NPA, 13 August 2013 (Annex TN21.4) 2. Minutes of Meeting (Annex TN21.10)
6 March 2013	Again pointing out the considerable delays that have occurred in this matter by providing a timeline; raising concerns about some of the investigative tasks mentioned at the meeting of 18 February 2013 and in the letter to Colonel Xaba – also that not all tasks agreed to at the meeting have been included in the letter. Emphasizing those outstanding investigations are concluded as agreed by 30 May 2013.	Letter from Thembi Nkadameng to NPA dated 6 March 2013 (Annex TN21.11)
13 March 2013	Adv. Macadam notes concerns about serious inaccuracies and unreasonable demands made in the letter of 6 March 2013 from Thembi Nkadameng. He undertakes to do his best to finalise investigation by 30 May 2013.	Email from Adv. Macadam to Adv. Robin Palmer dated 13 March 2013. (Annex TN21.12)
27 March 2013	Captain Masegela informs Thembi Nkadameng telephonically that the skeletal remain of a young woman has recently been found by construction workers at the site of new mall in Brits.	
6 April 2013	Response by Adv. Palmer to Adv. Macadam concerning the issues he raised in his email of 13 March 2013.	Email from Adv. Robin Palmer to Adv. Macadam dated 6 April 2013. (Annex TN21.13)

TP 15

15 April 2013	Raising concern that the contents of some communications between the family's legal representatives and NPA have been disclosed to the Sunday Times. Investigation into Sergeant Radebe's alibi is continuing. Checks are also being conducted on the mortuaries in areas relevant to the investigation for any records which might correspond with the missing person.	Email from Adv. Macadam to Adv. Robin Palmer dated 15 April 2013. (Annex TN21.14)
2 May 2013	Adv. Palmer asked for an update on the current status of the investigation to which Adv. Macadam replied that there were no new developments.	Email from Adv. Macadam to Adv. Palmer dated 2 May 2013. (Annex TN21.15)
17 May 2013	Adv. Macadam informs Adv. Palmer that investigation will not be concluded by end of May 2013 and reports: • The safe houses in use by the Soweto Security Branch have all been identified and been eliminated as having exhumation potential, except for the smallholding at Westonaria where consideration is being given to the feasibility of a probe • Radebe's alibi investigation concluded and it has been determined that he was a member of the SB at relevant time and not at Vehicle staff as he had claimed. • Mortuary checks are on-going; • The tracing of 18 MK members which is central to the defence of the white SB members is on-going. The case file relating to the arrest of Justice Ngidi has been found.	Emails between Adv. Macadam and Adv. Palmer 17 May 2013 (Annex TN21.16)

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26 June 2013	Canvasses the following issues: • Whereas it was indicated that a decision would be made by the end of May 2013 on this matter -this date has now passed and there is still no indication on what further investigative steps are envisaged before the NPA will be in a position to either make a decision to prosecute, or to refer the matter for a formal inquest. • The emotional toll the delays are having on the family and friends of Nokuthula Simelane • Request specific indications of remaining investigative steps together with target dates.	Letter attached to email from Adv. Robin Palmer to Adv. Macadam dated 26 June 2013. (Annex TN21.17)
13 August 2013	Skeletal remains have been found and DNA testing is being conducted. • Mortuaries records have been checked and four records have been found that could be relevant. These records are illegible and efforts are being made to obtain photos of the deceased. • MPTT have identified several "safe houses" that were in use by Security Branch and all of these except for a plot at Westonaria having been excluded as possible burial sites. An exploration to see whether an exclamation is feasible at the Westonaria plot is to be undertaken. • The key aspect of the 18 MK Operatives is on-going.	Letter from NPA, Acting NDPP, Advocate Jiba dated 13 August 2013 page 3 sub paragraph vii. (Annex TN21.4)
31 July 2013	This letter expresses frustration at the lengthy delay in completing the investigation and demands that this matter be urgently resolved by means of a prosecution or an inquest.	Letter from Legal Resource Centre (LRC) (representing family) to NPA dated 31 July 2013 (Annex TN31)

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5 August 2013	Letter from LRC to Acting NDPP disputing further reasons for delay	Letter dated 5 August 2013 responding to Adv Macadam email dated 31 July (Annex TN32)
5 December 2013	• DNA sample from Brits skeletal remains did not contain sufficient material for DNA extraction. A second sample to be obtained and sent to a specialist DNA Laboratory in Bosnia. • Facial reconstruction is being done in an effort to identify the remains. • The plot at Westonaria to be inspected by an anthropologist to determine feasibility of exhumations. • Four mortuary entries fit the criteria set these entries are however illegible. SAP Recovery Unit has been directed to find these graves and obtain a DNA sample from each for comparison purposes. • Plan and map to be submitted. • Additional TRC statements found and these need to be investigated. • 18 MK Operatives to be traced and interviewed.	Letter from PCLU, 5 December 2013. (Annex TN21.2)
16 January 2014	The family feels no closer to resolution despite the elapse of yet another year. The protracted delays with no action prior to 2010 are again pointed out. Family not satisfied with investigation progress since 2010 either. DNA and Exhumations – queries link between skeletal and other remains with Ms. Simelane and requests specifically what the links are to exclude “shots in the dark” as delaying tactics. Westonaria Plot- a possible exhumation of this plot should not cause delays in finalisation - unless there is specific evidence of a burial	Letter from Legal Resources Centre (representing family) to NPA dated 16 January 2014 (Annex TN21.18)

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	site. Requests a meeting with the acting NDPP to discuss these issues	
16 January 2014	Acknowledges letter dated 25 September 2013 and will provide a comprehensive report on investigations into DNA of skeletal remains found at Brits by end of January 2014.	Letter from General Dramat, National Head of DPCI dated 16 January 2014 (Annex TN21.19)
10 February 2014	In respect of DNA comparisons of skeletal remain found at Brits the testing has to be done at a specialist laboratory abroad which is expensive – procurement policies have to be followed for the authorisation of the expense. Such authorisation is awaited before proceeding with further sampling and testing. An expert in craniofacial superimposition was unable to make an identification. The Forensic Science Laboratory will follow up on the four remains identified in mortuary records and with a determination of possible exhumations at the Westonaria plot. Pending forensic results the investigator will continue the investigations identified by Adv. Macadam.	Letter from General Dramat, National Head of DPCI dated 16 January 2014 (Annex TN21.19)
26 February 2014	Family is concerned to note that DPCI do not accept responsibility of investigation delays over the past four years. It is also noted that investigation has not been prioritised by DPCI and the end of investigation is not yet in sight. The nexus between the skeletal remains and mortuary remains are queried and do not provide a reason to delay finalisation of case. Two questions are posed: 1. Have investigation been conducted diligently? 2. Did the discovery of the skeletal remains halt or delay investigations?	Letter from Legal Resources Centre (representing family) to General Dramat of DPCI dated 26 February 2014 (Annex TN21.20)
February to July 2014	No responses received to LRC letters to NPA dated 16 January 2014 and to the DPCI dated 26 February 2014. No other reports received.	

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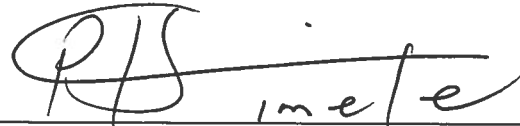
10 July 2014	Letter from LRC to the NDPP (copied to Adv. Abrahams and Macadam) noting that: • No response had been received to LRC's letter of 14 January 2014 and assuming that the NDPP did not wish to meet with the applicant and her legal representatives; • No monthly progress reports had been supplied by the PCLU as previously promised; • Applicant had not been advised of the DNA test results. The letter assumed that there was no real intention to make a decision to prosecute or not; and moreover that there is no intention to refer this case to an inquest. It accordingly reserved the rights of the applicant. No response was received from the NDPP.	Letter from LRC to the NDPP dated 10 July 2014 (Annex TN33)
10 July 2014	Letter from LRC to Lt-Gen. A Dramat, National Head: Directorate for Priority Crimes Investigation (DPCI), SAPS noting that: • No response had been received to LRC's letter of 24 February 2014 and assuming that the DPCI has no response and that no progress has been made in this investigation; • Applicant had been promised notification of the DNA test results but heard nothing; • There was no intention to finalize this matter expeditiously or at all and reserving rights of the applicant.	Letter from LRC to National Head: DPCI dated 10 July 2014 (Annex TN34)

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17 July 2014	Letter from National Head: DPCI to LRC disputing contents of LRC letter dated 10 July 2014 and: • alleging contact between applicant and investigating officer (IO); • notifying that the laboratory in Bosnia had completed the DNA tests and that the IO had been advised on 14 July 2014 that the results were negative; • alleging that extensive investigations had been conducted and the docket had been submitted to the NDPP for consideration and further instructions, if necessary; • Suggesting a meeting with the investigating officer's commanding officer Col Xaba to resolve any outstanding issues.	Letter of 17 July 2014 from National Head: DPCI to LRC disputing contents of LRC letter dated 10 July 2014 (Annex TN21.21)
31 July 2014	Meeting attended by Colonel Xaba (Director, Directorate for Priority Crime Investigation –SAPS), Captain Masegela (Investigating Officer), Thembi Nkadimeng, Frank Dutton (the family's private investigator); Carien Van Der Linde (instructing attorney, LRC) and Angela Mudukuti (Southern African Litigation Centre). The meeting followed mostly a question and answer format with Frank Dutton asking for details about the investigation. The docket was handed to the PCLU of the NPA on 14 July 2014 and Captain Masegela and Colonel Xaba are of the opinion that investigations are complete.	Minutes of meeting dated 31 July 2014 (Annex TN21.22)
11 August 2014	Letter from Colonel Xaba , Commander, Crimes Against the State, DPCI to LRC seeking an affidavit from the family's private investigator setting out what investigation he had conducted.	Letter from Colonel Xaba , Commander, Crimes Against the State, DPCI to LRC dated 11 August 2014. (Annex TN35)

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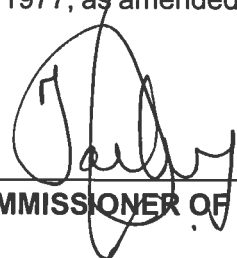
9 September 2014	In a letter dated 9 September 2014 the LRC advised Col Xaba that Frank Dutton took no statements.	Letter from the LRC to Col Xaba dated 9 September 2014 (Annex TN36)
10 September 2014	Col Xaba indicated that the National Prosecuting Authority (NPA) claimed it could not make a decision without the requested affidavit from Frank Dutton.	Letter from Col Xaba to the LRC dated 10 September 2014 (Annex TN37)
16 September 2014	Frank Dutton supplied the requested affidavit to Col Xaba	Email with attachment from LRC (on behalf of Frank Dutton) to Col Xaba (Annex TN21.23)
25 September 2014	Col Xaba requests information on Thembi's family members who were studying in Swaziland	Letter from Col Xaba to the LRC dated 25 September 2014 (Annex TN38)
22 October 2014	Col Xaba requested further information and an affidavit from the applicant	Email from Col Xaba to the LRC (Annex TN39)
20 January 2015	The applicant hands her affidavit to Captain Masegela	Email from the applicant
26 February 2015	Col Xaba indicated that investigations are ongoing.	Email sent from Col Xaba to the LRC and SALC (Annex TN40)



THEMBISILE PHUMELELE NKADIMENG

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at JOHANNESBURG on this the 18TH day of MAY

2015 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

TREVOR BAILEY ATTORNEY
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PARKVIEW 2193
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RSA.



ANNEXURES to IN CAMERA AFFIDAVIT

TN #	Description of Annexure	Paragraph(s) Cited
21.1	Extracts from of Police docket	Investigative Timeline
21.2	Letter from PCLU, dated 5 December 2013	Investigative Timeline
21.3	Letter from Dr. Ramaite, Acting NDPP, dated 31 January 2013	Investigative Timeline
21.4	Letter from NPA, Acting NDPP, Advocate Jiba re: PCLU's request for Duplicate Docket and TRC material, dated 13 August 2013	Investigative Timeline
21.5	Letter from Advocate Macadam of NPA, Deputy Director of Public Prosecutions and Deputy Head of PCLU to Senior Superintendent Louis Bester, dated 25 March 2010	Investigative Timeline
21.6	Letter from Advocate Macadam of NPA, Deputy Director of Prosecutions and Deputy Head of PCLU, to Captain Masegela, dated 27 October 2010	Investigative Timeline
21.7	Inquest Request – letter from T.P. Nkadimeng to NPA dated 11 February 2013	Investigative Timeline
21.8	Letter from Dr. Ramaite, Acting NDPP to T.P. Nkadimeng , dated 12 February 2013	Investigative Timeline
21.9	Letter from Adv. Macadam to Colonel Xaba of DPCI, dated 13 February 2013	Investigative Timeline
21.10	Minutes of meeting between Adv. Macadam (PCLU) Susanne Bukau (PCLU) Colonel Xaba (Hawks) Captain Masagela (DPCI) and Adv. Palmer, Alan Wallis (SALC), dated 18 February 2013	Investigative Timeline
21.11	Letter from Thembi Nkadimeng to NPA, dated 6 March 2013	Investigative Timeline
21.12	Email from Adv. Macadam to Adv. Robin Palmer, dated 13 March 2013	Investigative Timeline
21.13	Email from Adv. Robin Palmer to Adv. Macadam, dated 6 April	Investigative Timeline
21.14	Email from Adv. Macadam to Adv. Robin Palmer, dated 15 April 2013	Investigative Timeline
21.15	Email between Adv. Macadam and Adv. Palmer, dated 2 May 2013	Investigative Timeline
21.16	Emails between Adv. Macadam and Adv. Palmer, dated 17 May 2013	Investigative Timeline
21.17	Email from Adv. Robin Palmer to Adv. Macadam, dated 26 June	Investigative Timeline
21.18	Letter from Legal Resources Centre (representing family) to General Dramat of DPCI, dated 16 January 2014	Investigative Timeline
21.19	Fax from General Dramat of DPCI to LRC dated 16 January 2014	Investigative Timeline
21.20	Letter from Legal Resources Centre (representing family) to General Dramat of DPCI, dated 26 February 2014	Investigative Timeline

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TN #	Description of Annexure	Paragraph(s) Cited
21.21	Letter from National Head: DPCI to LRC disputing contents of LRC letter dated 10 July 2014, dated 17 July 2014	Investigative Timeline
21.22	Minutes of meeting attended by Colonel Xaba (Director, Directorate for Priority Crime Investigation –SAPS), Captain Masegela (Investigating Officer), Thembi Nkadimeng, Frank Dutton (the family's private investigator); Carien Van Der Linde (instructing attorney, LRC) and Angela Mudukuti (Southern African Litigation Centre)	Investigative Timeline
21.23	Email dated 16 September 2014 with attachment – Frank Dutton affidavit from LRC to Col Xaba	Investigative Timeline

Suid-Afrikaanse Polisiediens

Your reference / U verwysing

HEAD NATIONAL CRIME INVESTIGATION SERVICE
HOOF NATIONALE MISDAADONDERSOEKDIENS

My reference / My verwysing 29/36/2

Enquiries / Navrae Direct Thoms / Capt Leask

GAUTENG

Tel (011) 407-0152

JOHANNESBURG

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2000

1996-02-19

1. The investigation into this matter has received priority attention and the necessary statements obtained where possible.
2. The following persons have given sworn statements:
 - 2.1 Mrs Simelane - Mother of missing person Nokuthula Simelane.
 - 2.2 Sgt Mzimkulu Nimrod Veyi - Members of the South African Police Service and source of revelations made to Sowetan and published on 1995-02-06.

TPD

-2-

- 2.3 Constable Malosela Patrick Kobe - Member of the South African Police Service and ex member of the Security Police.
- 2.4 Constable Mokone Matsebetse Edward Sefuthi - ex member of Security Police, now retired.
- 2.5 Mr Petrus Cornelius Welthagen - owner of farm at Northam where part of alleged crimes were to have taken place.
- 2.6 Sgt Moleke Peter Lengene - member of the South African Police Service and presently still working under the direct command of Superintendent Anton Pretorius.
- 2.7 Mr Norman Lungile Mkhonza, alias "Scotch" - ex covert agent for security Police, Protea, Soweto.
- 2.8 Inspector Mokapi Lazarus Selamolela - member of the South African Police Service and ex-member of the Security Police, Protea Soweto.
3. Very briefly, the persons interviewed scratch the facts leading to the disappearance of Nokuthula Simelane as follows:
 - 3.1 She was an MK agent for the ANC and conducted courier services from Swaziland to South Africa and visa versa.
 - 3.2 She worked under the command of a "Mpho" who during September 1983 sent her to South Africa where she was to meet agent "Scotch".
 - 3.3 Before meeting "Scotch" she stopped over at an ANC Safehouse where Mr Duma Nkosi assisted her with directions to get to the Carlton Centre.
 - 3.4 Nokuthula Simelane met with Scotch (covert agent) who had already informed the then Warrant Officer W H J Coetzee and Sgt A Pretorius who organised the arrest of Nokuthula Simelane in a basement at the Carlton Centre.

TP ①

-3-

- 3.5 After her arrest she was taken to a room in the married quarters of the SAPS Norwood where she was detained and tortured for about one to two weeks. Hereafter she was taken to a farm at Northarn in the Northern Transvaal, where she was further detained, tortured and interrogated. This lasted up and until the festive season, December 1983. It was at this stage that she was last seen by the witnesses interviewed.
4. The actual interrogators are alleged to be
- W H J Coetzee now Superintendent
A Pretorius do
F B Mong now Inspector
P Lengene now Sergeant
Radebe now retired
5. Witnesses/suspect that are alleged to be deceased are Sgt Mathuba and ex covert agent Frank Langa "Big Boy"!
6. On 1996-02-15 an interview was held with Mr D Nkosi in Cape Town.
- 6.1 He knew about the meeting which was to take place, also that he had provided safety for Nokuthula in Soweto and after giving directions to her to reach the Carlton Centre, Nokuthula was never seen again.
- 6.2 Upon his return from Cape Town Mr Nkosi will assist and facilitate a meeting where "Mpho" will also then be interviewed and their full statements obtained.
7. On 1996-02-17 on the request of Sgt Lengene I re-interviewed him in which he passed on the following information:
- 7.1 He had not told the truth on the day he gave me his statement for the following reasons:

TP 11

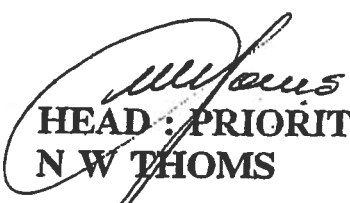
-4-

- 7.1.1 He is presently serving under the command of Superintendent A Pretorius who also brought him for the interview on the day of him giving his statement.
- 7.1.2 He had been told that it was up to him and Norman "Scotch" to save their skins.
- 7.1.3 That Director Thoms would reveal all that he had said to them after taking his statement.
- 7.1.4 The Captain Leask would not be able to prove any charges as he had no proof of a body,
- 7.2 After the interview the following took place:
 - 7.2.1 He was taken to Superintendent Coetzee's office where he was asked what had been said during the interview.
 - 7.2.2 He was led into an argument because he had mentioned Scotch's name.
 - 7.2.3 He was told to rewrite a statement which Superintendent Pretorius then first read and after okaying it, told him to keep it in a safe place so that it could later be handed to their attorney as they were busy arranging this through the Police.
- 8. On 1996-02-07 Superintendent Coetzee promised Captain Leask, the investigating officer to make available the witness/suspect "scotch" which up and until now has not been honoured.
 - 8.1 The investigating officer however on 1996-02-09 found Scotch, on own accord and obtained his statement.
 - 8.2 On 1995-02-10 Superintendent Pretorius and Coetzee secretly met with Scotch and coached him into what his version and manner should be if Captain Leask was to approach him. This discussion was secretly taped by the investigation team.

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-5-

9. It has become further very clear from the meeting with Sgt Lengene on 1996-02-17 that the incident regarding Nokuthala was not a once off incident but part of an extensive conduct which has lead directly to the planting of bombs, kidnapping of and murdering of numerous other persons.
- 9.1 Lengene confesses his own part in the murder of a person whom he had shot with an AK 47 rifle given to him by Superintendent Pretorius/Coetzee after the person had been told to plant a limpet bomb in Soweto.
10. A detailed statement will be obtained from Sgt Lengene on 1996-02-19 at a secret rendezvous upon which he has firmly stated he wishes to reveal all the "dirty tricks" which had taken place during his career in the Security Police as of 1982 up and until now.
11. It is of great concern to this office that both Superintendent Coetzee and Pretorius are presently employed in positions where they can easily continue with intimidation, defeating the ends of justice because of their contacts with the CIS and its members. This could also lead to the ~~e~~llumination of witnesses.
12. The investigating team has to go to great lengths to keep the investigation, witnesses and information from the very persons attached to the priority crimes division of Gauteng. It is suggested that they be ~~re~~ transferred to a post in the Uniform Pro-active division.
13. All further information will be brought to your attention.
14. An official murder and kidnapping investigation has been launched under registered case docket John Vorster Square CAS 1469/02/96.


DIRECTOR
HEAD : PRIORITY CRIME : GAUTENG
N W THOMS

/MH/LIB/1/108

TF 10

South African Police Service



Suid-Afrikaanse Polisie diens

Private Bag 5
Privaatsak

Your reference / U verwysing

HEAD NATIONAL CRIME INVESTIGATION SERVICE
HOOF NASIONALE MISDAADONDERSOEKDIENS

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29/36/2

Direct Thoms / Capt Leask

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1996-02-26

- A. The Divisional Chief
National Crime Investigation Services
PRETORIA
- B. The Head
National Priority Crime Investigation Services
PRETORIA

**INVESTIGATION INTO THE ALLEGED KIDNAPPING AND
MURDER OF NOKUTHULA SIMELANE DURING SEPTEMBER 1983
- MEMBERS OF THE SECURITY POLICE PROTEA, SOWETO -
HEAD OFFICE REFERENCE 54/1/2(668) REFERS**

1. The investigation into this matter has received priority attention and the necessary statements obtained where possible.
2. The following persons have given sworn statements:
 - 2.1 Mrs Simelane - Mother of missing person Nokuthula Simelane.
 - 2.1.1 She states that Nokuthula was last seen in June 1983 - she was always travelling between S.A. and Swaziland as she was working for the ANC. Her disappearance was strange as she was to have graduated during October 1983 - Her personal belongings were found at Duma's place in Soweto as he was the last person of the ANC to see her.

TP 1

-2-

- 2.2 Sgt Mzimkulu Nimrod Veyi - Member of the South African Police Service and source of revelations made to Sowetan and published on 1995-02-06.
- 2.2.1 He states that he guarded Nokuthula as he worked under the command of Nokuthula's captors Superintendent Coetzee en Pretorius - His guard duties took place at the farm in Northam - he witnessed torture of Nokuthula - last saw her alive in the boot of Superintendent Coetzee's state vehicle on Potch/Johannesburg road near Fochville.
- 2.3 Constable Malosela Patrick Kobe - Member of the South African Police Service and ex member of the Security Police.
- 2.3.1 He states entirely hearsay evidence - he never knew or saw Nokuthula - he worked covertly on the AZAPO line - only heard rumours that Superintendent Pretorius, Coetzee and Inspector Mong were responsible for the alleged murder of Nokuthula.
- 2.4 Constable Mokone Matsebetse Edward Sefuthi - ex member of Security Police, now retired.
- 2.4.1 He states that he was a guard who on instructions of Superintendent Coetzee and Pretorius assisted in arresting Nokuthula at the Carlton Centre, taking her then to Norwood SAPS flats where she was detained for $\pm$ one to two weeks, then taken to Northam where she was kept for $\pm$ 2 months - he also witnessed torturing and last saw her at the farm.
- 2.5 Mr Petrus Cornelius Welthagen - owner of the farm at Northam where part of alledged crimes were to have taken place.
- 2.5.1 He states that Superintendent Coetzee a family member had requested the use of the outbuilding for training of police recruits - he cannot identify Nokuthula but states that two women were brought to the farm over a period of two months.
- 2.6 Sgt Moleke Peter Lengene - member of the South African Police Service and presently still working under the direct command of Superintendent Anton Pretorius.

TP (5)

- 2.6.1 He in his first statement corroborates Sefuthi but denies ever having seen any torture taking place - he further states that Superintendent Coetzee and Pretorius gave Nokuthula clothing and money during December and released her to return to Swaziland.
- 2.6.2 In his second statement he alleges his first statement was made under duress from Superintendent Pretorius and Coetzee - he was told to rewrite a statement which he did and Superintendent Pretorius first checked it (Now as exhibit with Investigating officer) - he further states and corroborates the other witnesses that Nokuthula was trapped, tortured and adds that she was taken to Westonaria where she was further detained by Superintendent Coetzee and Pretorius at the private dwelling of Coetzee's brother - he then also states that he was part of a force under Coetzee and Pretorius in which he and other security Policemen and/or Askaris murdered ANC recruits after letting them place limpet bombs at railway points in Soweto - further that they also blew up and threw handgranades at councillors houses and municipal buildings in Soweto - he also has exposed the names of the other members involved.
- 2.7 Mr Norman Lungile Mkhonza, alias "Scotch" - ex covert agent for security Police, Protea, Soweto.
- 2.7.1 He states that he was a covert agent and set up the trap for Superintendent Coetzee and Pretorius to capture Nokuthula - he was taken to a clinic after her arrest where he was placed in plaster of paris and a false message was sent to Swaziland by covert agent Frank Langa, that he had never met Nokuthula because he was involved in a car accident.
- 2.8 Inspector Mokapi Lazarus Selamolela - member of the South African Police Service and ex-member of the Security Police, Protea Soweto.
- 2.8.1 He corroborates all the other witnesses with regards to the trap, detaining and torture of Nokuthula - he however does not corroborate Veyi in that they were together when Veyi alleges he last saw Nokuthula alive in the boot of Coetzee's vehicle.

TP 01

John Vander Square CAS 1469/02/96

-4-

- 2.9 Gilbert Thwala alias "Mpho" - Nokuthula's Commander in Swaziland.
 - 2.9.1 He states she was sent to meet Scotch and Frank at the Carlton Centre - she was last seen or heard of after this meeting - she was expected back because she had to graduate - complete denial that the ANC had killed her as she was very valuable to them.
- 2.10 Duma Nkosi - owner of ANC Safehouse in Senoane Soweto.
 - 2.10.1 He states that she stayed at his place whilst in Johannesburg 1983 - he gave her directions to get to the Carlton Centre on her request - she never returned - her personal belongings were removed from his place by her parents.
3. The actual interrogators are alleged to be

W H J Coetzee now Superintendent
 A Pretorius do
 F B Mong now Inspector
 P Lengene now Sergeant
 Radebe now retired
4. Witnesses/suspect that are alleged to be deceased are Sgt Mathuba and ex covert agent Frank Langa "Big Boy"!
5. On 1996-02-07 Superintendent Coetzee promised Captain Leask, the investigating officer to make available the witness/suspect "scotch" which up and until now has not been honoured.
 - 5.1 The investigating officer however on 1996-02-09 found Scotch, on own accord and obtained his statement.
 - 5.2 On 1995-02-10 Superintendent Pretorius and Coetzee secretly met with Scotch and coached him into what his version and manner should be if Captain Leask was to approach him. This discussion was secretly taped by the investigation team.

TP (1)

John Vorster Square CAS 1469/02/96.

-5-

6. It has become further very clear from the meeting with Sgt Lengene on 1996-02-17 that the incident regarding Nokuthula was not a once off incident but part of an extensive conduct which has lead directly to the planting of bombs, kidnapping of and murdering of numerous other persons.
- 6.1 Lengene confesses his own part in the murder of a person whom he had shot with an AK 47 rifle given to him by Superintendent Pretorius/Coetzee after the person had been told to plant a limpet bomb in Soweto.
7. It is of great concern to this office that both Superintendent Coetzee and Pretorius are presently employed in positions where they can easily continue with intimidation, defeating the ends of justice because of their contacts with the CIS and its members. This could also lead to the ellumination of witnesses.
8. The investigating team has to go to great lenghts to keep the investigation, witnesses and information from the very persons attached to the priority crimes division of Gauteng. It is suggested that they be re-transferred to a post in the ~~Uniform Pro-ective~~ division.
9. An offical murder and kidnapping investigation has been launched under registered case docket John Vorster Square CAS 1469/02/96.

B.1. For your information


DIRECTOR
HEAD : PRIORITY CRIME : GAUTENG
N.W. THOMS

/MH/LB11/118

JPD

POLICE DOCKET:

PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996

Complainant: Sizakele Ernestinah Simelane

Offences: Murder: Method: unknown: Injuries: unknown
Kidnapping: falsely arrested during September 1983 at Carlton Centre.

Record of documentary and other exhibits: JVR(A)197/96: Cassette tape

STATEMENTS

SIZAKELE ERNESTINAH SIMELANE: Krugersdorp CAS 1263/01/96 – A3

A2 – Photograph of Nokhuthula

Press Clippings: Sowetan articles by Sharon Chetty – 27/1/95 and 6/2/95

MZIMKULU NIMROD VEYI: Krugersdorp CAS 1263\01\96 – A3
Sergeant in SAPS, Vehicle Theft Unit, Soweto

Wishes to make statement even though it may incriminate me. In 1981 joined SB at Protea in Soweto. Served in SB until 1985. On 27/1/95 read an article in the Sowetan in relation to Nokuthula Simelane who was reported missing as of 8/9/83. Approached Sharon Chetty and gave her story which was published on 6/2/95.

Duties: act as conveyer of information between handler and informer. Also had to recruit informers.

Scotch: Norman Mkhonza, covert policeman of security branch at Protea. Joined the ANC undercover and worked in Swaziland where he infiltrated the ANC. He reported to his handler: Warrant Officer WHJ Coetzee (now a Colonel with SAPS in Braamfontein). He advised Coetzee of the rendezvous at the Carlton. Arranged for her to be arrested. Both arrested so that cover of Scotch would not be blown. Policemen who went to Carlton included:

W/O Coetzee, Sgt Anton Pretorius (Col in Midrand), Sgt Radebe (discharged), Constable Lazarus Selamolela (Sgt at Sanab, Sandton), Late Sgt Mathiba.

Taken to a farm at Northam. The day after arrest he was posted to the farm to guard her. Persons who guarded her were:

TP 11

Constable Lazarus Selamolela, Const Edmond Sefuthi, Sgt Radebe, Sgt Mathiba, Adriaan Bambo (a recruit from Mozambique who is deceased), Manual from Mozambique, Const Patrick Kobe (taxi unit, Heidelberg).

Assault

She was kept in an outbuilding. She was interrogated by Coetzee, Pretorius and Mong. (Mong is in Soweto). Kept there for more than a month. Hands and feet were cuffed. Sleep was kept to a minimum. She was kicked and slapped. Bag was pulled over her head. At times she could no longer stand. "I was present and did what was expected of me".

Disappearance

One day myself and Lazarus were instructed to go to the SB at Potchefstroom and meet with Coetzee. We drove 1982 beige Honda Ballade. Close to 4 way stop of Fochville and Carltonville with the Joburg/ Potch road we saw a XR6 flashing lights. It was WO Coetzee. Coetzee who was on his own opened the boot and I saw Nokhuthula lying there with her hands (behind her back) and feet cuffed. She was alive. Coetzee told us to return to Soweto.

A few days later I asked Sgt Pretorius where she was as all the guards had been withdrawn. His response: "Moenie baie vrae vag nie". Spoke to Mathibe who said that Coetzee and Pretorius had shot, killed and buried her at Rustenburg.

Signed at Jhb on 96/02/02 at 14:30
Before Capt Leask, Krugersdorp

MALOSELA PATRIC KOBE: Krugersdorp CAS 1263/01/96 – A7

Detective Constable with National Crime Investigation Unit, Priority crimes, Taxi Conflict – Heidelberg.

During 1982 I joined the SAP I was deployed by Internal Security covertly against Azapo.

Knows nothing of the Simelane woman. Did not see her at the farm and denies meeting her. In 95 Const Veyi telephoned me about this woman. Said I did not know her but heard that she had been arrested **and she had been seriously assaulted**. Got the info from Sgt Mathibe. He is however dead.

Everything I know is hearsay. I heard that Sgt Anton Pretorius, WO Coetzee, and Sgt Mong killed her. Although I was handled by these people I did not see anything.

Signed at Jhb on 96.02.05 at 13.30 before N W Thomas.

TP 09

MOKONE MATSEBETSEBE EDWARD SEFUTHI: Krugersdorp CAS 1263/01/96 – A8

Was a SA Policeman. Presently medically unfit. Handed a copy of his **life history** to the investigation team. Started duties with SB, Protea, Soweto in 1982. First gave driving lessons then did covert work which included transport of members to border posts. Recognized photo of deceased. Aware that SP under handling by WO Coetzee made use of Scotch to lure her to the Carlton. Scotch is Norman Mthanza, a covert policeman.

Persons present at time of arrest included: Coetzee, Sgt Pretorius, Sgt Mong, Lazerus Selapomela, Scotch. He himself was not present. Got the information through Scotch. After the arrest I know that she was taken to the Block B Flats at Norwood Police Station.

I had to guard her in the room on the roof of the building. She was kept there for about 3 weeks. One of the residents in the flats, a child, "discovered us detaining her there **after she had been screaming from assaults**".

We then took her to a farm in Northam in a cream white E20 Panelvan. The farm belonged to "Oom Piet". His house was very close to the building in which she was kept. She was held here for about 2 months. During this time she was interrogated by Coetzee, Pretorius and Mong. **She was hand and foot cuffed, severely beaten and tortured. At one stage she was unrecognizable.** At the farm she was guarded by myself, Peter Lengene and Veyi.

I was at the farm for at least one month. At a stage I asked Pretorius what happened to her and he said to me that **"I would never see her again"**. Coetzee and Mong were present when this was said.

At one stage during the detention of the woman at the farm I had wanted to release her. **"She was however too badly injured and could not walk"**.

"I strongly suspect that Nokhuthula has been murdered by Coetzee, Pretorius and Mong. They continuously threatened her with death during the interrogation. I had told Nokhuthula never to give the information as they would then kill her".

96/02/06 Before Leask

MOKONE MATSEBETSEBE EDWARD SEFUTHI: Life History – A8

...I was transferred to SA Intelligence in Soweto Protea that is where I was completely exploited.i saw injusticeANC members were captured, tortured brutally both men and women ..

See para 44: Attempted murder of black policeman, Sefuthi: Sefuthi says summoned by AG in Jhb who says strong case but cannot allow it to proceed attackers were state members acting under cover and he cannot hamper the image of the state

TP 9

PETRUS CORNELIUS WELTHAGEN: Krugersdorp CAS 1263/01/96 – A9

Lives on farm in east Northam. In early 95 his farm was visited by Sowetan reporters who took photos. A family member, Willem Coetzee, who was in the SAP asked if he could use the outside building for training of persons in the underground. I agreed.

They stayed on the farm for about 3 months. While they were there I did not go to the building. I was aware that 2 black women received training. One followed the other. They were young about 18 years. I will not recognise them.

There was no noise or screaming. The building is about 300 m from my house.

Have not seen Willem Coetzee in 3 years.

96-02-08 - Leask

MOLEKE PETER LENGENE: Made under duress. Krugersdorp CAS 1263/01/96 - A10

Sergeant in SAPS attached to Crime Intelligence Unit, Jhb. He was a “returned exile” and in 1983 was stationed with the Security Police at Protea in Soweto. His task was to train new recruits. His commanders were Capt Coetzee and Lt Pretorius.

In relation to Nokuthula his task was to explain to her “how we worked”. This was when she was detained in “a room at the back of the farm”. He does not know how she got there.

One morning, Capt Coetzee, Lt Pretorius and Sgt Mony arrived at the farm with new clothing for her. She was told that she was being taken back to Swaziland. They took her away in Ford XR6. I never saw her again. Other policemen involved “with this lady” were Sgt Sefuthi and Norman Mkhonza.

“When I last saw her she was in good health”. Denies assaulting her. When he saw her for the first time she was in “good health”, “**however she did have some bruises on her face**” There were also bruises on her hands. She explained to him that this was because of the handcuffs.

96/02/09 at 10.03 at Jhb before Leask

NORMAN LUNGILE MKHONZA – A11 (also known as Scotch) - Krugersdorp CAS 1263/01/96 – A11

Employed by Old Mutual. Claims he is bound by the Secrecy Act and cannot give information to anyone.

TP D

During 83 was stationed at Protea Security Branch. Task was to work as an undercover agent in Swaziland. He had infiltrated the ANC. Commander was "Willem Coetzee 'Mkhize'".

He passed on information to Coetzee that an MK agent female was to meet with him at the Carlton Centre. The instruction from Swaziland was to wear a yellow shirt and brown trousers. She found me sitting at a table at the "Fun Foods Restaurant".

Coetzee, Pretorius and Mony were present. One was taking photographs. On the way to car we were both arrested. We were taken in separate cars and I did not see her again. I was released the same day.

My code name was Dan. I was taken to East Rand where I had plaster of paris applied to my leg and arm. This was my cover why I did not meet her. "Big boy" Frank Langa took this message back to Swaziland. He worked at the security police. Protea.

About 2 weeks later I asked Coetzee where the lady was and he replied: "Moenie baire vrae vra nie". A few months later I asked the same question and he gave the same answer.

Coetzee gave me money to entertain her so that she could be photographed. It was about R100. I have signed for the money at Norwood where Coetzee was staying.

PETRUS MOKEBE MADIBO: Krugersdorp CAS 1263/01/96 – A12

Sergeant in SAP and attached to the West Rand Murder and Robbery Unit, Krugersdorp. On 96/02/10 upon the request of Capt Leask I proceeded to Vereeniging where I handed over to "Scotch" a tape recording device with a clean tape in it.

This device was hidden on the body of Scotch and we monitored Scotch in the presence of 2 white men at the Wimpy in Vereeniging. After the meeting I recovered the device from Scotch which I then gave to Capt Leask. I do not know what was said during this discussion. The white men drove in a white Opel Kadet CA 553 781.

MOHAPI LAZARUS SELHMOLELA: Krugersdorp CAS 1263/01/96 – A13

Inspector in the SAPS and attached to the Organised Crime Investigation Unit, Gauteng. In 1983 Coetzee was my commander. He instructed me to accompany him to the Carlton Centre. Those present included Coetzee, Pretorius, Sgt Mathuba, Sgt Radebe. It is possible that Sefuthi and Mong were also there.

Scotch was followed by our team to the Juicy Lucy in the Carlton Centre. We followed them to the basement where they were arrested and split up. Radebe was in the back of

TP ①

Coetzee's car with the lady. We followed them to the Norwood married quarters of the SAP. At the top of the building was a room used by the security police. She was interrogated there by Coetzee and Pretorius. The team was all present.

She was kept there for about a week. She was guarded 24 hours by the team. Sgt Vezi also joined us during this period. Whilst in my presence at the married quarters nobody assaulted her. **It was however clear to me that she had been assaulted. Her face was badly swollen.**

When she was originally arrested she was wearing jeans. During her detention she wore overalls. I did not see her other injuries.

After a while we were instructed by Coetzee to follow them to a farm in Northam. I was driving with Vezi. She was put in a small outbuilding at the back of the farm. We erected a tent behind the room where we slept. She was kept on the farm for more than a month. She was interrogated here which was done by Coetzee, Pretorius and Mong. Mathiba was also present.

She was assaulted by use of a bag over her head, use of electrical shocks. She became very weak and could no longer walk. Us black members always tried our best to nurse her but had to be careful not to be caught by our superiors.

During her detention, the assaults were the cause of her changing her physical appearance. She was treated very badly for a woman.

One night this same lady was taken to the zinc dam where Radebe threw her in. She was thrown into the dam after interrogation bouts.

At the farm, Peter Lengene was also present.

She at this stage could no longer walk and we had to even take her to the toilet.

One day we were all withdrawn from the farm. That is the last time I saw her. I do remember Pretorius saying he was just going to lock her up. I thought they were going to take her to a police station.

I do not know who took her away from the farm as I was one of the first to leave. Coetzee, Pretorius and Radebe were still with her when we left.

I never asked questions after last seeing the body.

96.02.11 at 12.08 before Leask

TP 11

Interview of Sgt PETER LENGENE at Grasmere 1 Stop N1 at 19:24 – 21:45 on 96/02/19 by Leask, Madibo and Badirwang: John Vorster Square CAS 1469/02/96 – A14

In 1982 I was in exile in Gaborone, Botswana where I was kidnapped by Coetzee and Pretorius. I was beaten and tied during the kidnap. I was taken to a house in Rustenberg. This house belonged to Coetzee's in-laws.

Under duress I worked for the security police. My work was to train their recruits about politics and life in exile. I would go to Durban and elsewhere to assist in recruiting people. I was made a policeman but I never went to college.

First I wish to state that my original statement was not the whole truth. The reasons are:

1. I was taken to the interview by Supt Pretorius. We first met with Supt Coetzee.
2. Pretorius told that I should not worry as Director Thoms was going to help us in this matter.
3. That Director Thoms would later show them the files. I was therefore feeling uncomfortable to make a statement as I knew they would be reading it later.

After making the original statement the following took place:

1. I was told to report to Coetzee's office.
2. I was asked to tell them what I had said in my statement. I told them and they questioned me .. for talking to Scotch. They insisted he was not there. The same about Sgt Sefuthi. They said Mathiba was present.
3. Pretorius told me that I must rethink my statement and bring it to him so that he can file it and later show it to our lawyers. I did this.
4. Pretorius was given my statement which he read and gave it back to me. He told me to keep it safe because if he it they could say he was interfering with witnesses. He said that him and Coetzee were the accused.
5. Pretorius asked me if I was shown the photo in the file. He asked me if it was the same woman and I said yes.

Before I made my original statement, Pretorius had told me that the case could not be proved because there is no proof. They suspected Veyi of giving the information to the press.

I fear Supt Coetzee and Pretorius very much and at no cost must they become aware of my statement to you.

Gives an account of abduction and removal to Norwood. The first time I saw her when I went to guard her. **She was already beaten up.**

She had bruises on her face, hands and feet. She was wearing a brown overall. Her hands and legs were cuffed. I was never present when she was interrogated at the flats.

TP (1)

She was transferred one or 2 weeks later to Northam Farm near Thabazimbi. I went to the farm in December 1983 with Sgt Sefuthi. **He was in possession of the keys for the cuffs. This was so he could untie her if she wished to relieve herself.**

During my stay Coetzee and Pretorius never came. **On my arrival at the farm this lady was in a bad condition. She told me that she was very afraid of Coetzee as he was very hard on her during interrogation.** She told me she had been promised to be taken to back to Swaziland.

On New Year's eve, Pretorius came with Coetzee and Mong. They had brought new clothes with them for her. Coetzee told her to wash and put the new clothes on. They said they were taking her to Swaziland. The lady was put into the back of our panel van and we followed Coetzee and the others to Westonaria. Here we took her to a certain house where she was placed in the servant's quarters.

Here she was left in the company of Sefuthi, Pretorius and Coetzee. Mong was instructed to take me back to Jhb, which he did. This was the last time I saw this woman. One day after this Sefuthi, Mong and myself were in a vehicle. Sefuthi asked what had happened to her and he said that if we wished to survive in this department you should not ask questions.

I wish to give details on other activities I had taken part in on instruction from Pretorius and Coetzee starting with a murder I was directly involved in.

Not sure of exact year, I think it was 1988. We had a source who had infiltrated the ANC youth in Soweto. This was Max Maukhanzane. He is now a policeman at Jabulani SAP. Then proceeds to explain his role in booby trapping limpet mines and his shooting of a recruit at the behest of Pretorius; and the burning of the bodies, Also gives accounts of involvement of attacks on house of a councilor, and the rector of Vista College, and the bombing of municipal offices in White City and Mzimbhlophe Hostel.

96/02/17 before Leask

GILBERT ZAKHELE THWALA: John Vorster Square CAS 1469/02/96 – A15

Inspector General, SA Airforce, HQ Pretoria.

During 1983 I was a commander in the ANC armed wing based in Mbabane. I knew Nokhuthla from 1977. During 1983 she was under my direct command. She was a courier for the units serving in SA. During August or September I instructed her to go to Jhb to meet members of another unit. She was to stay at Duma's place in Soweto. The persons she was to meet were known to me as Frank and Scotch.

TP 17

She reported her safe arrival. After her meeting she was supposed to return to Duma's place with the communications then proceed to her parents in Bethal and then return to Swaziland.

She never reported back to me. Duma said she never returned. Her parents had no information. The very same weekend of her disappearance either Frank or Scotch was in Swaziland. This was against strict instructions of the ANC that they were never to come to Swaziland. He claimed he had come to Swaziland cos he was scared.

Scotch and Frank had instructions to attack a substation in Randburg. I had confirmation of such an attack in the news.

After this incident neither Frank nor Scotch ever came back to us. I received a visit from the parents of Nokhuthula and I explained to them.

The persons under my command who had specifically spoken to Scotch or Frank in Swaziland would have been Mafa Ngidi Hlonuka (Mayor of Alex/ Sandton) or John June, staying in Phefeni, Soweto. My codename in 83 was Mpho.

She was not kidnapped or murdered by my men. She was of great value to my unit.

96/02/24 before Leask.

DUMA NKHOSI: John Vorster Square CAS 1469/02/96 – A16

In August and September 1983 was attached to a MK unit operating from Swaziland and working in Soweto. Mr Mpho, based in Swaziland, was his commander and would send him instructions.

Was advised that a courier, the late Simelane, would visit and to give her assistance and residence. She stayed with me and I directed her to the Carlton. She left and never returned. Reported this to Mpho who said she never arrived back in Swaziland. Her parents came to investigate.

96/02/24 at Braamfontein before Thoms

THEMBI VILAKATI: John Vorster Square CAS 1469/02/96 –A17

Aunt of the deceased. During 1983 Nokhuthula stayed with deponent. She had just completed her degree and was about to graduate in October 1983. In September she said she was going home to get clothes for her graduation. She never returned. Nokhuthula normally kept in close contact with me and her family. She never made contact.

06/02/29 at Manzini before Leask

TP 07

JAN STEFANUS FOURIE : John Vorster Square MAS 1469/02/96 - A18

Forensic analyst in the SAPS. Leask gave him "mikrokassetband" to examine. "Daar is n poging aangewend om die spraak verstaanbaarheid op die heropname te verbeter. Ek het geen byvoegings gemaak tot, of geen deel verwyder vanaf die oorspronklike opname nie."

1996 -03 -05 at Silverton

J VAN ZYL – A19

During 1982 -83 he was a member of the SAP stationed at Norwood and served as caretaker (opstigter) of the Police Flats in Norwood.

One Coetzee, a member of the old security branch, together with his staff members, used a storeroom on the 10th floor of the building as an office for interrogation. I cannot remember who gave permission for this use.

96/03/28 before Leask

JOHAN HENDRIK PRETORIUS: Krugersdorp CAS 1263/01/96: PR NO: 107/96 – A20

Inspector in official photography service of the SAPS stationed at the Criminal Record Centre in Rustenberg. On 96-02-08 at 12:15 I photographed points at the farm Uitsig as pointed out by Sgt Weyi. Photos attached.

JUSTICE MAFA HLOMUKA NGIDI: John Vorster Square CAS 1469/02/96 - A21

Mayor of Sandton City. In response to claim by Gilbert (A15) that I spoke to Scotch or Frank I deny this. Instructions were clear that after training Mpho would give instructions to Scotch and Frank so I did not have communications with them.

96/7/03

MSEBENZI TIMOTHY RADEBE –A22 (untruthful statement)

Detective Inspector with the Kwa Mhlanga Motor Vehicle Theft Unit, Mpumalanga.

In 1982 I was transferred from Murder and Robbery to Soweto Internal Security Services. I worked under Superintendent Willem Coetzee, who was a warrant officer and Senior Superintendent Pretorius who was a sergeant at the time.

TP 9

One Saturday, Coetzee told me there was work to do at the Carlton Centre. He asked me to meet him at the Norwood barracks and told me to proceed to a certain restaurant to meet an informer by the name of Scotch who was on observation.

While in the restaurant I noticed a certain lady come to the informer and sat with him for about 20 minutes. She was in a chicken licken uniform. They left the restaurant and Scotch signaled us by taking out a white handkerchief.

Outside the restaurant I introduced myself and I told her that I was arresting her. She was very co-operative and we went to the basement where our car was parked. I proceeded with Coetzee and Lazrus.

She was kept at Norwood barracks for about a week. Myself, Lazrus and N.... and a certain female guarded her.

I last saw her the day I guarded her. I then asked for a transfer. I asked Coetzee why I should guard a person for 24 hours and he did not give me an answer. He said that in the security branch you must no complain you must comply with instructions. I was then transferred to John Vorster Vehicle Branch.

96-07-26 before Capt Ndlovu

WARNING AGAINST W H J COETZEE ITO S35 OF THE CONSTITUTION: at 14h30 on 6-07-1998 at Pretoria – A23

In the case of murder of Nokhuthula Simelane – during September 1983 at about Carlton Jhb. Declined to make a statement.

3 PHOTOGRAPHS OF THE WELTHAGEN FARM

CORRESPONDENCE

LETTER FROM N W THOMS, HEAD PRIORITY CRIMES, GAUTENG TO A CACHALIA, SECRETIRIAT FOR SAFETY & SECURITY AND NATIONAL HEAD, PRIORITY CRIMES DATED 96-02-19 – B1

Reference 29/36/2 Director Thoms/ Capt Leask

Investigation has received priority attention. Listed people who have given statements.

Pointed out that Sgt Moleke Peter Lengene still works under direct command of Superintendent Anton Pretorius.

TP 1

Sketched the facts as given by the persons interviewed.

In paragraph 3.5 she was taken to a room in the married quarters of SAPS Norwood where she was detained and tortured for about 2 weeks. Then taken to a farm at Northham where she was further detained, tortured and interrogated. This lasted till the festive season, December 1983. This was the last time she was seen by the witnesses.

Par 4: the actual interrogators are alleged to be: Coetzee, Pretorius, Mong, Lengene and Radebe.

Par 5: Witness/suspects believed to be deceased are Sgt Mathuba and Frank Langa "Big Boy".

Par 7: On 1996-02-17 on the request of Sgt Lengene I (Capt Leask) re-interviewed him. He said his first statement was not truthful. Because he was serving under Pretorius. Pretorius told him that "it was up to him and Norman "Scotch" to save their skins". That Director Thoms would reveal all that he said in his statement. That Capt Leask would not be able to prove any charges as he had no proof of a body.

After the interview he was taken to the Coetzee who wanted to know what had been said in the interview. He was led into an argument because he had mentioned the name of Scotch. He was told to rewrite a statement which Pretorius okayed and told him to keep it in a safe place so that it could later be handed to their attorney as they were busy arranging this through the police.

On 96-02-07 Coetzee promised Leask to make the suspect Scotch available which he never did. Leask however found him.

Par 8.2: On 95-02-10 Pretorius and Coetzee secretly met with Scotch and coached him into what his version should be if Capt Leask approached him. This discussion was secretly taped by the investigation team.

Par 9: It has become very clear from the meeting with Sgt Lengene on 96-02-17 that Nokhuthula's incident was not a one off event but part of an extensive programme involving bombings, kidnapping and murder of numerous persons.

Lengene confesses his own part in a murder in which he shot someone with an AK47 given to him by Pretorius and Coetzee.

A detailed statement will be obtained from Sgt Lengene on 96-02-19 at a secret rendezvous at which he will reveal all the dirty tricks he was involved in.

Par 11: It is of great concern that Coetzee and Pretorius are still in positions in the police where they can easily continue with intimidation, defeating the ends of justice because of their contacts with the CIS and its members. This could lead to the elimination of members. It is suggested that they be transferred to the Uniform pro-active division.

TP 0

An official murder and kidnapping investigation has been launched - John Vorster Square CAS 1469/02/96.

**TELEFAX FROM CAPT LEASK TO MINISTER MUFAMADI, DATED 96/02/22
-B2**

**LETTER FROM CAPT LEASK TO CO, ELECTRONICS UNIT, FORENSIC
LAB, DATED 96-02-26 - B3**

Attached one micro cassette tape properly sealed with no 224. Conversation with three parties in a busy restaurant. As a result of background noise this impaired to a certain extent the proper hearing of the discussion.

Seeks assistance to diminish background noise but to maintain authenticity.

**LETTER FROM N W THOMS, HEAD PRIORITY CRIMES, GAUTENG TO
DIVISIONAL CHIEF, NATIONAL CRIME INVESTIGATION SERVICES AND
HEAD, NATIONAL PRIORITY CRIMES DATED 96-02-19 - B4**

Same letter as B1

TELEFAX TO DUMA NKOSI FROM CAPT LEASK DATED 96/03/05 - B5

Attached statement of Duma. Advised that he (Leask) had made contact with Steven Markowitz and believe that we will be getting all the necessary assistance. States that the Director and myself have already been to Swaziland and all went well there.

**LETTER FROM J S FOURIE, FORENSIC SCIENCES LAB TO CO SAP, JOHN
VORSTER SQUARE DATED 96-03-04 - B6**

Returns evidential items to Capt Leask with seal number 1815

**RESULT OF TRIAL: INVESTIGATION BY FORENSIC SCIENCE LAB. REF
NO: 8625/96 (T1759)**

Nothing stated in the document.

**LETTER FROM ASST COMMISSIONER L VAN DER WESTHUIZEN, NCIS,
GAUTENG TO PROVINCIAL COMMISSIONERS - NORTHERN PROVINCE,
NORTH WEST, MPUMALANGA, GAUTENG, FREE STATE, EASTERN CAPE,
WESTERN CAPE, KWAZULU NATAL, NORTHERN CAPE DATED 96-03-06 -
B7**

TP 0

Re: Missing persons period 1980 to 1996. Unidentified bodies recovered by the SAPS. Requests assistance of all SAPS Govt mortuaries to supply list of all unidentified bodies removed by the SAPS, race and sex, place of discovery and cause of death, case or inquest number, fingerprints or photos on record.

INVESTIGATION DIARY

INVESTIGATION DIARY: Krugersdorp 1263/01/96: 96/01/30 – 98/02/10: C1 –12

Selected extracts: 96/02/07: 16.00 Const Selomolela interviewed. Knows the woman but wishes to first seek advice and clear his thoughts before making statements. Appointment made for the next day at Nandos Krugersdorp.

96/02/08: 08.30: he is willing to give a statement as he fully intends to approach the TRC. He will first approach his attorney and then make a new appointment.

96/02/14: meeting with Thoms at office Azar Cachalia.

96/02/26 Case discussed with Deputy Attorney General Adv Kevin Attwell and Adv De Vries on 96/02/23. Recommendation that the matter be discussed with Dr De Oliviera of the 3rd Force Investigations. Discussion was held with de Oliviera. All possible evidence must be gathered and investigation must proceed.

96/02/28: Linda Moni contacted at his home. Represented by Wynand Louw of Joubert & Cornelius. Wished to consult with client before statements.

96/08/05: correspondence forwarded to Duma Nkosi as per B5. Mr Steve Markowitz of New Vision productions was interviewed.

96-10-22: Saak word vir afwagting van PG terruggehou. Adv Ebrahim lees die stukke. Open n Ondersoek dag we..eus (?) boek - NW Thoms

96/10/23 Noted. Investigation notes are filed in respective files – Leask

98/02/10 – amnesty hearings o/s.

TP 07

Priority Crimes Litigation Unit



The National Prosecuting Authority of South Africa
Igunya Jikelele Labeshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

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.



Justice in our society, so that people can live in freedom and security

TP m



"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

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

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

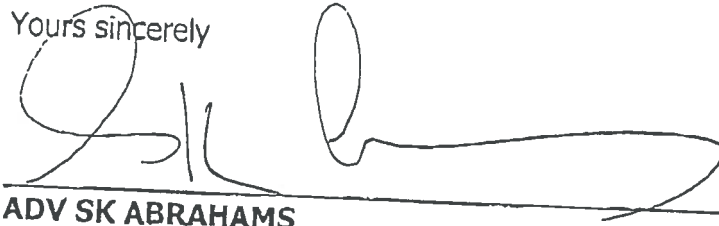
- 6.5 Were a prosecution to be instituted, the witnesses would be prejudiced, as they would then be subject to cross-examination in two *fora* on the same issues.
7. I provide the following further information by way of a progress report covering the period October to December 2013:
- 7.1 I have already 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 07

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

Office of the
National Director of Public
Prosecutions



The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

31 January 2013

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Dear Ms Nkadimeng

**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)**

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Pretoria
0001
Tel: (012) 845-6000
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www.npa.gov.za

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.



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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

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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. Report referred to in the letter
17. Whole of above in the 2010 letter
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

TP 07

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.

① Exhumation
beginning in
spring

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.

② unidentified
persons

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.

How big
is the
farm

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

TP ⑦

"fully investigated case"

authorise any such conduct, as this would not be conducive to the interests of justice.

why were

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.

what then are courts doing

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

TP 07

**Office of the
National Director of Public
Prosecutions**



13 August 2013

Your Ref: B Sibiya

Legal Resources Centre
Constitutional Litigation Unit
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JOHANNESBURG
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Fax: (011) 834 4273

Dear Sir/Madam

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF
NOKUTHULA SIMELANE**

Your letters dated 31 July 2013 and 5 August 2013 have reference.

I must at the outset express my understanding of your client's anguish and frustration at the unresolved investigation into the disappearance of her sister.

I am however constrained to respond to the issues raised in your letters.

In response to your client's letter of 29 January 2013, Dr Ramaite SC in detail on 31 January 2013 explained why, although regrettable, no investigations were conducted into the disappearance of your client's sister from 2001 until March 2010.

It must be emphasised that the National Prosecuting Authority (NPA) is not an investigative agency and the mandate of conducting investigations into your clients matter rests with the Directorate for Priority Crime Investigations (DPCI) of the South African Police Service (SAPS).



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Since its inception in March 2003, the Priority Crimes Litigation Unit (PCLU) in my office, in addition to conducting and managing prosecutions, has been mandated solely to manage and direct investigations which are conducted by other law enforcement agencies.

It is therefore not correct, as you claim in your letter of 31 July 2013, that it is the NPA (and more specifically the PCLU and/or Adv Macadam of my staff), which is conducting the instant investigation.

During a meeting on 18 February 2013 between your client's then legal representative (Adv Palmer), Adv Macadam, the investigating officer (Captain Ali Masigela) and his commander (Colonel Xaba), the latter endeavoured to conclude the investigation by the end of May 2013.

During May 2013 the DPCI advised the PCLU that its investigation into your client's sister's disappearance would not be concluded by the end of that month. As a result Adv Macadam informed Adv Palmer in writing, on 17 May 2013, that the investigations would not be finished by the end of May 2013, and requested him to indicate his availability for a meeting to discuss the issues as it had previously been agreed that the parties would have a progress meeting at the end of May 2013. Although Adv Palmer was unavailable to attend such a meeting as he was abroad, he was nevertheless informed in writing of what further investigations were being carried out by the DPCI.

On 27 June 2013, Adv Palmer was again provided with written feedback as to the status of the further investigations which had to be conducted. In this regard, he was specifically informed at the time that an exact date for the conclusion of such investigations could not be given.

I have been advised that in addition to the written communications between Adv Macadam and Adv Palmer, there were several telephonic communications where the issue of the progress and investigations was discussed.

Towards the end of July 2013 Adv Macadam was contacted telephonically by Adv Palmer, phoning from abroad, who requested a meeting which was consequently scheduled for 20 August 2013. This was the earliest date that Adv Palmer was available.

TP 07

Your client's contention that the investigation can be finalised by 30 August 2013 is unfortunately practically impossible and hence entirely misplaced. I am constrained to point out the following:

- i. Ms Nokuthula Simelane disappeared in 1983.
- ii. The first information relating to her disappearance came to light in 1996, resulting in a police docket being opened.
- iii. The investigating officer at that time was instructed by his superiors not to continue with the investigation.
- iv. An amnesty hearing of the Truth and Reconciliation Commission (TRC) produced a series of contradictory versions from the witnesses who testified.
- v. The judgment of the Amnesty Committee was only handed down in May 2001.
- vi. In March 2010 a duplicate docket as well as TRC material which had been requested from the State Archives was available.
- vii. The original docket was only located later the same year, which resulted in the investigating officer being directed to conduct a number of extensive and complex investigations on 27 October 2010.
- viii. What transpired further has been dealt with extensively in Dr Ramaite SC's letter referred to above.

I have been advised that the following aspects are under investigation by the DPCI:

- i. Skeletal remains were found during the course of an exhumation, which are currently undergoing full forensic and DNA analysis. The DPCI has indicated that the outcome of these examinations will determine the nature of further investigations which are necessary. I have been advised that the results of the analysis are only expected within the next four to five months.
- ii. The Missing Persons' Task Team (MPTT) has examined the mortuary records of all mortuaries which have relevance to the disappearance of your client's sister. Four mortuary entries have been shortlisted. However, the records do not

TP 17

contain legible post mortem reports and in certain instances the relevant police station and docket particulars are not reflected. As an interim measure enquiries are being conducted with the local fingerprint bureaus in order to establish whether photographs were taken prior to the post mortems and whether such albums are currently still in existence.

- iii. The various safe houses in use by the Soweto Security Branch were inspected by the MPTT in order to establish whether human remains could have been buried there. The examinations produced negative results. However, in respect of a small holding in Westonaria, enquiries are being conducted to assess the feasibility of an exhumation. Obviously the outcome of all the other exhumation-related issues will determine whether an exhumation should be conducted at this site.
- iv. It was a key submission by several of the amnesty applicants that the arrest of a number of MK operatives supported their version that Ms Simelane had not been tortured for a month, as alleged by other applicants. Extensive efforts are being made, via the SAPS, Justice and other State Archive systems, to locate the relevant dockets, court records and other relevant documentation so that not only properly informed consultations may be conducted with these persons, but also so that corroboration from former State officials may be forthcoming. It is an extremely time consuming process to request and retrieve such information which has to be followed up carefully.

In your letter of 31 July 2013, you demand that I make a decision to prosecute the alleged perpetrators or refer the matter for the holding of an inquest by no later than 30 August 2013. In your letter of 5 August 2013, you infer that your client would review her instruction should no decision be forthcoming on the premise that a reasonable explanation for the delay in the finalisation of the investigation is provided.

In light of the nature of the investigations, I am not persuaded that the DPCI would be able to conclude same by the end of August 2013.

In terms of the NPA Policy, a decision whether or not to prosecute must be carefully considered and may only be taken once all the relevant issues have been properly investigated. In the event that I decide to institute a prosecution, I must, *inter alia*, be satisfied that there are reasonable prospects of a successful prosecution.

TP

Similarly, an inquest may only be held once a case has been fully investigated and where a prosecutor has declined to prosecute. The holding of an inquest before the issues set out above have been investigated would in all probability result in the presiding officer declining to hold an inquest.

The amnesty hearing demonstrated serious legal challenges to the conflicting versions of witnesses and applicants. Any attempts made to hold an inquest without all the relevant issues having been investigated would result in objections from the lawyers representing the implicated parties causing an untenable delay.

Once the matter has been fully investigated, the evidence must be carefully evaluated by the PCLU, which must also canvas the views of the Directors of Prosecution of the South and North Gauteng High Courts where key elements of the offences were committed. I will thereafter be provided with a recommendation on whether or not to prosecute. I will thereafter advise you of my decision herein once I have fully applied my mind to the relevant material.

I wish to reassure your client that the PCLU is doing its level best to ensure the DPCI speedily and efficiently conclude the investigation into the kidnapping, torture, disappearance and murder of her sister, Ms Nokuthula Simelane.

The PCLU will also advise your client, through you, on any progress with the outstanding investigation on a monthly basis up until the finalisation of the investigation.

I therefore advise you to consult carefully with your client on the contents of this letter. Should you nevertheless proceed with a court application, same will be opposed and an appropriate order of cost sought.

I trust you find the above in order.

Yours sincerely



ADV N JIBA
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS



Priority Crimes Litigation Unit



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25 March 2010

Senior Superintendent Louis Bester
Directorate for Priority Crimes Investigations
PRETORIA
0001

By hand

Dear Superintendent Bester

**INVESTIGATION: NOKUTHULA SIMELANE; JOHN VORSTER
PLEIN CR 1469/02/1998**

In this case, the deceased disappeared from the Carlton Centre in 1983 and to date, her body has not been recovered.

An investigation by the D'Oliveira Unit obtained evidence to the effect that she was kidnapped from the Carlton Centre, taken to the Norwood Police Barracks and thereafter, to a farm in the North West Province, where she was assaulted by Security Branch members.

Several former Security Branch members, including Coetzee, Pretorius and Mong received amnesty for her kidnapping, but not for her assault. The assault crime prescribed in 2003 and consequently at this stage, consideration can only be given to an investigation into her murder. At present, there is no evidence indicating where and when she was killed and what was done with her body.

The family are represented by Adv Howard Varney (Cell: 0716720122 and 0832617062) and have requested that consideration be given to prosecuting former Detective Inspector Msebenzi Timothy Radebe, who was involved in the kidnapping at the Carlton Centre and Norwood Police Station. He had submitted a witness statement, "A22" in the docket.

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TP 7

It must be established whether the witnesses are still available and whether they confirm their statements in the docket, as well as their testimony before the Truth Commission. They should also indicate whether there is anything in addition which they would like at this stage to indicate.

The version of Radebe differs from that of the other persons, who were State witnesses. The decision to treat Radebe as a witness and to obtain an affidavit from him rather than warning him, appears strange. The former investigating officer must be approached and requested to explain why a witness statement was taken from Radebe. If he was made a witness, it would be difficult at this stage to justify now charging him.

In the event of the National Director declining to prosecute in this matter, then an inquest would have to be held and it must be established in which Magisterial District the farm where the deceased was last seen alive is located.

The NPA was only provided with a duplicate docket. It is only to be anticipated that it may be difficult to locate the original, as this was opened by the D'Oliveira Unit, which closed down 10 years ago. However, the witnesses can confirm that the statements in the duplicate docket properly reflect their versions as provided to the D'Oliveira Investigation Unit.

The duplicate docket and four other files are attached herewith and must be returned once the investigation has been completed.

Kind regards



RC MACADAM
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
AND DEPUTY HEAD: PRIORITY CRIMES LITIGATION UNIT

TP ①

Priority Crimes Litigation Unit



The National Prosecuting Authority of South Africa
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Captain TP Masegela
Crimes Against the State
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27 October 2010

Email: BestertL@saps.org.za

Dear Captain Masegela

NOKUTHULA SIMELANE
JOHN VORSTER SQUARE CAS 1469/02/96
CATS 01/082010

In this matter no person has as yet been arrested or prosecuted. No corpse has been found which matches that of the missing person. In the event of a prosecution not being conducted, an inquest would have to be held. Having regard to the facts of the case, were an inquest to be held, it would be desirable that a formal one be held.

The material placed before me consists of the following:

- (a) A duplicate John Vorster Plein docket missing certain statements;
- (b) An original investigation diary;
- (c) Loose photographs;
- (d) Extracts from the Amnesty application.

I have added the judgment of the Amnesty Committee to the TRC documents,

Both the initial investigation and the amnesty hearing require further investigations, which are set out hereunder. In the event of a



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TP 9

prosecution, only the police investigation and the statements and evidence of the State witnesses, who applied for amnesty, may form part of the docket. The amnesty statements and evidence of the accused could not form part of the docket.

In the event of an inquest, all the relevant facts would have to be placed before the Inquest Magistrate, in which case all the amnesty material would have to be included.

It is therefore recommended that the docket be compiled in three separate sections:

1. [The police investigation and all investigations carried out thereon;
2. All the material which was placed before the Amnesty Committee;
3. All investigations carried out as a result of the evidence before the Amnesty Committee.

A complete set of all the evidential material (testimony applications and documents) placed before the Amnesty Committee must be obtained. A bundle would have been compiled by the TRC of all the relevant documentary evidence, placed before the Committee. (This may have included the police docket.)

The applicants completed application forms and attached thereto statements and other documents.

The applicants and witnesses then testified and the transcripts of their evidence are necessary, as well as any documents which may have been introduced during their testimony.

Documentation currently missing includes:

- The testimony of Duma Nkosi;
- Portions of the cross-examination of Veyi;
- Statement made by Veyi, which accompanied his amnesty application.

As far as the police investigation is concerned, the following further investigations are necessary:

TP (1)

What
of these
have
been done?

- ✓ Although the original "C"-clip is in the docket, the "B"-clip and the original "A"-clip are missing. There is a duplicate docket, but certain statements are missing, certain statements have not been allocated an "A"-clip number and certain statements have not been signed, nor commissioned.
- ✓ A portion of another docket Krügersdorp CAS 1263/01/96 has been included in the John Vorster docket, but the whole Krügersdorp docket is required.
- ✓ The original investigating officer is required to submit a statement, setting out all the steps taken in the investigation and indicating when last he had the original docket in his possession. He should also assist in reconstructing the docket and addressing issues relating to the unsigned statements, etc.
- ✓ According to the investigation diary, in 1996 the Rustenburg LCRC compiled a photograph album and sketch plan of the farm where the missing person was detained. This album and plan should be obtained, as at present, there are only loose photographs. If the original album cannot be located, then the farm must be revisited with the relevant witnesses and a new album and sketch plan compiled.
- ✓ It must be established whether all the original witnesses are available and if so, they must be requested to comment on whether they stand by their original statements and if they testified before the TRC, their TRC versions. Any contradictions or retractions should be properly explained.
- ✓ In several of the statements reference is made to persons who are claimed to be dead. Confirmation of these deaths must be obtained.
- ✓ The issue of "A22" (MT Radebe) is puzzling and must be clarified:
 - The first witness to come forward was ~~Van~~, who indicated that Radebe participated in the torture at the farm. The statement of Radebe is however to the effect that he only guarded the missing person at the Norwood flat for a week and was then transferred to the John Vorster Vehicle Branch. Another witness, Selamolela, also alleges that Radebe was at the farm and in fact claims that the missing person was last seen in Radebe's company, together with two other persons, namely Coetzee and Pretorius. All the witnesses involved in the kidnapping and assault of the missing person made statements to Captain Leask, who warned them of their right against self-incrimination.

TP 9

- o In the case of Radebe, we only have an unsigned and unattested statement, purportedly taken by Captain Ndlovu of the Braamfontein Police. Radebe was not warned of his right against self-incrimination according to the statement. The circumstances under which the statement was obtained must be properly established and in particular, it must be established whether at any stage, Radebe signed an affidavit.
 - o If Veyi and Selamolela are telling the truth about Radebe's involvement at the farm, then his statement to the effect that he 'was never there must be a lie.' Conversely, if in fact he was transferred to the Vehicle Branch, then a question mark hangs over the veracity and the reliability of Veyi and Selamolela as witnesses.
 - o Whether Radebe is being truthful or not could easily have been verified by establishing whether in fact he was transferred to the Vehicle Branch in early September 1983. The original investigating officer must indicate whether any investigations in this regard were conducted and if so, what the outcome thereof was. If this was not properly established at the time of the initial investigation, then this aspect must be now investigated. I assume that the SAPS personnel registers could provide relevant information. According to the private investigator, Radebe is still a serving member of SAPS.
 - o Radebe never applied for amnesty and the family of the missing person have made representations that he should be prosecuted. Whether he can at this stage be prosecuted would depend on whether he was given the status of a witness at the time of the initial investigation. The investigating officer must be requested to fully explain this issue.
 - o Once all of the above has been investigated, Radebe should be approached, warned of his rights and requested to indicate if he wishes to make a statement at this stage.
- ✓ Although it is alleged that Peter Lengene is dead, he made various statements in the docket. He alleges that there was an attempt by Pretorius and Coetzee involving Director Thoma, to induce him to make a false statement. The docket shows that the original investigators and other police officers were involved in arranging for the under-cover policeman, Norman Mkonza (Scotch) to have a taped conversation with either Pretorius or Coetzee. Various entries have been made in the investigation diary and reference is made to

TP

a tape being kept as an exhibit. The investigating officer must explain what the outcome of all of this was and Director Thoms must also be approached to indicate whether he has any knowledge of this matter.

- ✓ According to Patrick Kobe ("A7"), he heard that Coetzee, Pretorius and Mong had killed the missing person. He must indicate from whom he received this information.
- ✓ A further statement must be taken from Duma Nkosi, providing the further additional detail:
 - Whether the missing person was known to him prior to her being sent to him by Mpho;
 - How he received instructions from Mpho;
 - What the missing person exactly was to do;
 - To whom he made enquiries to trace the missing person's whereabouts;
 - Whether he suspected that the missing person had been detained by the Security Branch and if so, whether he adopted any counter-measures.
- ✓ A further statement from Justice Ngidi must be obtained covering the following:
 - What the nature of his dealings with the missing person were;
 - When last he saw her before she disappeared;
 - Whether he was aware of what duties she was performing on behalf of Mpho;
 - What missions Mpho gave to Scotch and Frank;
 - What training was given to these persons and how well were they known to Mpho;
 - Since it appears that he was based in Swaziland at the time, he should comment on what structures were in place in Swaziland at the time. Lengene said that Coetzee and others were taking the missing person to Swaziland. The witness must be requested to indicate what structures would have

TP 17

been in place on the Swaziland side of the border post and what would have happened had the missing person presented herself at that point.

- ✓ It must be established how far from the Oshoek Border Post the University where the missing person was studying at, the premises from which Gilbert Twala operated and the home of Thembi Vilakati are.
- ✓ The person referred to as John June in paragraph 9 of Gilbert Twala's affidavit must be traced and requested to submit a statement regarding his knowledge of the matter.
- ✓ According to Veyi, Manuel from Mozambique was also involved. Efforts should be made to identify him and obtain a statement from him.
- ✓ There is also reference to an Adrian Bambo, who is also referred to as "Strongman". It must be established whether in fact he is now deceased.
- ✓ According to the witness statements, the following premises and intersections have relevance:
 - The Norwood Flats;
 - The farm at Northam;
 - The Potchefstroom Security Branch office;
 - The Intersection referred to by Veyi;

A map should be obtained where all these points are marked and the distances between them indicated.

- ✓ At the end of the police investigation, the following emerges:
 - Veyi says that he was in the company of Selamolela when he saw the missing person in the boot of Coetzee's car after she had left the farm and at a four-way stop.
 - Selamolela however claims that he last saw her at the farm in the company of Coetzee, Pretorius and Radebe.

TP 07

- o Lengene says that the missing person was told to wash and put on new clothes, because she was being taken to Swaziland. He claims he drove her in a van to the servants' quarters in a certain house in Westonia where she was left in the company of Sefuthi, Pretorius and Coetzee.
- o Sefuthi merely mentions being at the farm, does not indicate when he last saw her and in whose company she was, but claims that he suspects that she was killed by Coetzee, Pretorius and Mong, because they threatened her with death during the interrogation. He does not mention Radebe as being present at the farm.
- o It would appear that Pretorius, Coetzee and Mong were not informed of the allegations and invited to respond.
- ✓ The versions referred to above are all contradictory and on the very points where corroboration should be obtained, the witnesses contradict each other, e.g. Selamolela makes no mention of being at the intersection with Veyi and Sefuthi makes no mention of being at the house in Westonia. Lengene's version of the missing person being prepared to return to Swaziland and leaving in his van is not supported by the other witnesses. It must be established whether there are other members of the Security Branch Unit to which all these persons belonged, who could possibly at this stage shed light on the various allegations.
- ✓ The confusion continues at the amnesty application where for example Selamolela is emphatic that he did not accompany Veyi to the intersection and suggests that this was Sefuthi. Sefuthi never testified at the amnesty application and as is clear from his statement to the police, last saw the missing person at the farm.
- ✓ Coetzee, Pretorius and Mong all testified at the amnesty application and denied that the missing person was as severely assaulted as claimed by the other witnesses. They also claimed that she agreed to become a police informer and was handed over to two undercover police officers (whom they claimed were now dead); who dropped her off at the Oshoek Border Post. This contradicts the version of the other witnesses to the effect that the missing person at no stage agreed to cooperate and being an informer.
- ✓ Coetzee was cross-examined on the basis of information which Lengene provided to Faris Malapo. A statement must be obtained from Mr. Malapo in which he sets out what he knows about this

TP 19

matter and what exactly was conveyed to him by Lengene and any other person whom he may have interviewed.

- ✓ It was a key feature of Mong, Pretorius and Coetzee's amnesty applications that they could not have participated in the protracted assaults as alleged, because at that time they were involved in the investigation of certain terrorist cases and carried out arrests. Efforts should be made to trace these cases in order to confirm whether there is objective proof that he was performing duties outside the farm at Northam at the relevant time. A Mr Brits was at one stage in charge of all the dockets opened by the Security Branch and I believe that these dockets are currently being stored at CATS.
- ✓ It was also a feature of the applications that they claimed that they planted certain explosive devices at power stations and a railway line in order to create the impression that these attacks had been carried out by MK. This was ostensibly to deceive the ANC into believing that these attacks had been carried out as a result of the missing person's information. Again with reference to the dockets and other records (e.g. Bomb Disposal Unit records) held by SAPS, it must be established whether these explosions in fact took place and whether there is evidence showing that it was these persons who carried out these attacks.
- ✓ Finally, it was also alleged that as a result of the information provided by the missing person that certain MK members were arrested and prosecuted. This issue also surfaced in the cross-examination of Gilbert Twala, who admitted that certain persons had been arrested, but alleged that this had taken place before the disappearance of the missing person and on the basis of the information of an informer. Again, efforts must be made to establish the relevant details regarding the arrest of these persons in order to establish which of the two versions is correct. In this regard, the Department of Justice & Constitutional Development still retains records relating to the detention of various people and these should also be checked.
- ✓ Coetzee, Mong and Pretorius place reliance on various people who they allege are now dead. In addition to the two under-cover police officers referred to above, reference is also made to Brigadier Muller, Coetzee's commanding officer, as well as to "Strongman" Mbombo. It must be established whether these persons did in fact hold the positions as alleged and when they died. This is important, because it will have to be decided whether they were implicated

TP 17

specifically because it was known that they were dead and could not refute the allegations.

- ✓ Coetzee claims that Brigadier Muller briefed Brigadier Schoon about the plan to use the missing person as an informer. It must be established whether Brigadier Schoon is alive and if he can comment on this allegation.

✓ Coetzee also claims that the Eastern Transvaal Security Branch had a file on the missing person, who had been identified as a MK member. Efforts should be made to identify the members of this branch at that time to see if anyone can confirm or deny this allegation.

✓ The version of how the missing person was tortured, became an informer, was dropped off at the border post and then no inquiries made when she disappeared, appears to me to be implausible. Efforts should be made to establish whether there is a reliable senior member of the Security Branch who could indicate whether the process followed by Coetzee was in fact appropriate in the light of the procedures and practices of the Security Branch of that time.

- ✓ According to Veyi, he met with the Divisional Head of the Security Branch at Potchefstroom, after leaving the farm. (See pages 105 and 106.) It must be established who the Divisional Head was at the time and if he is available, a statement must be obtained from him.

- ✓ It was common cause that Veyi first approached The Sowetan and in particular a journalist, Sharon Chetty. Veyi was cross-examined about the fact that the journalist reported that he had decided to come forward, because Coetzee and the others had been promoted and not himself. He denied having said this. The journalist also reported that the ANC only contacted the missing person's family 10 years after she had disappeared, which was also disputed by Gilbert Twala. The journalist must be traced and asked to comment on these allegations.

- ✓ Selamolela alleges that there was only one entrance to the Norwood Flats, which was disputed by Coetzee. It must be established which version is true. If the building has been unaltered, then current photographs can be taken. If however it has subsequently changed, then efforts must be made to establish whether there are plans or photographs of it as it existed in 1983.

TP 97

- ✓ There were major disputes between the witnesses surrounding the dam, the outbuilding, the main farm house and the washing facilities available. If the premises have not been altered in the interim, they should be photographed to obtain clarity on all these issues.
- ✓ In his evidence, Gilbert Twala mentioned a number of persons who might have knowledge of the events, e.g. Wally and Wendy Mbana. Efforts must be made to trace these people to obtain statements from them.
- ✓ Gilbert Twala was called to refute the allegation that the missing person had returned to Swaziland and been murdered by the ANC. Under cross-examination, he however alleged that he could not talk about ANC structures in Swaziland, but only knew about the Transvaal Unit located in Soweto. Efforts would have to be made to identify the relevant structures in Swaziland at the time, who can comment on the allegation made by Coetzee and others. Twala alleged that Sphiwe Nyanda, currently the Minister of Communications, may well be placed to assist in this regard. It was specifically alleged that the missing person had meetings with the current Minister. The Minister would have to be approached to provide a statement.
- ✓ Under cross-examination of Mr Twala, it was put to him that there was an intelligence unit which killed MK members, who were traitors. It was also alleged that the Motsosanyame Commission also made a finding concerning a person who had the same MK name as the missing person. These aspects would have to be investigated and if necessary, statements obtained.
- ✓ Swaziland is a SADC member and consequently, the SADC policing protocol applies. Contact should be made with the Swaziland authorities to establish whether it is at all feasible that records would exist showing that a body matching that of the missing person was ever found. It is highly unlikely that such a search of police dockets and inquests could be conducted, but it would have to be explained to a Court that this avenue was explored.
- ✓ It is clear that there are considerable disputes regarding how and under what circumstances the missing person left the farm. This raises the possibility as to whether she was not in fact killed and buried on the farm. A suitably qualified exhumation expert should be requested to visit the farm in order to establish whether any exhumation is at all possible. An exhumation under forensic procedures should be carried out if the response is positive.

TP 67

11

- ✓ According to Lengene, the missing person was taken to a private residence in Westonaria. Under cross-examination, Coetzee admitted that he had a brother who lived in Westonaria and worked on a mine. This avenue should be properly investigated.
- ✓ According to Veyl, he was told by a former police officer who subsequently died, that Coetzee and Pretorius had shot the missing person and buried her in Rustenburg. It should be established whether Coetzee and Pretorius had safe houses in the Rustenburg area or friends or relatives who had plots or farms in Rustenburg. If any premises are identified, consideration should be given to whether an exhumation is feasible.
- ✓ As I have already indicated, the witnesses who gave statements must be requested to confirm what has already been said. It would appear that Coetzee, Pretorius and Mong have never cooperated with the investigation and it would be appropriate, once all the investigations have been concluded, to approach them via their attorney, Mr Wagener, to comment on the allegations.
- ✓ As I have also already indicated, the situation relating to Radebe is strange. It may well be that he could hold the key to explaining what really happened on the farm and he should be approached in this light.

The duplicate docket and four blue files may be collected from my office, but must be returned to me once the investigations have been concluded.

Kind regards


RC MACADAM
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
AND DEPUTY HEAD; PRIORITY CRIMES LITIGATION UNIT

TP 17

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11 February 2013

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National Prosecuting Authority
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BY HAND

Dear Dr Silas Ramaite,

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)

I thank you for your letter dated 29 January 2013. The purpose of this letter is to respond to your letter and secondly to consider the most appropriate way forward.

I acknowledge and appreciate your expression of sympathy for me and my family. Regrettably, I am unable to accept your contention that the murder of my sister has received the "*diligent attention of the NPA*". Very little has happened in this matter since a docket was opened in the mid-1990s and not much more has transpired since the matter was referred to the PCLU in 2003. I find it very difficult to understand how a murder investigation can proceed for nearly 2 decades with no progress or conclusion one way or another. Either a prosecution or an inquest should have taken place by now. The failure to resolve this matter, and other outstanding cases from the past, has done a great disservice to me and my family, as well as many other families and communities, and indeed to the country.

I am also advised that an inquest may not be unreasonably delayed simply because every last aspect has not been completed. The holding of an inquest and even the making of an inquest finding does not prevent further investigation from taking place. If one had to wait until every last aspect of an investigation is completed a neglectful official or one acting in bad faith may delay or prevent a public inquiry into a death by never completing the investigation.

I note that in your paragraph 12 you state that by late 2010 the case had "*not been fully investigated by the TRC or by (the) SAPS*". I agree with this conclusion but would state further that more than 2 years later the same situation pertains. I would also suggest that the responsibility for this dire state of affairs cannot be laid exclusively at the door of the SAPS. The

NPA must also bear some responsibility as it oversees and directs investigations of the police and as from 2003 was directly responsible for the "TRC cases", including this matter.

I have been advised to respond to certain matters raised in your letter. I do not intend to deal with every matter raised in your letter and the attached correspondence and such failure should not be construed as acceptance of the contentions made therein. For the moment I will confine my response to those matters which are simply incorrect and cannot stand uncontested.

At paragraph 2 of your letter you state that the first information identifying the suspects was only received by the SAPS in 1996. This assertion is not consistent with the facts. The culprits were the police themselves. My sister was kidnapped, tortured and murdered by the police. These crimes were authorized at the highest level of the organisation. Not only did the police know who the suspects were they also colluded in the cover-up of the crimes. It is possible that up to the present day elements in the police are still colluding in this cover-up.

I note that in paragraph 6 you concede that the "TRC cases were temporarily put on hold pending the formulation of the guidelines" since "it was deemed important that special considerations" applied to them. You do not state how long the TRC cases were put on hold or what special considerations warranted their holding back and differentiation from other cases. It is clear that this case, as well as other serious cases, were held back for several years. During this time many crimes that ought to have been prosecuted prescribed in terms of the statute of limitations. This, in my view, was unforgiveable. The formulation of the so-called guidelines in no way justified the suspension of investigations into murder and other serious crimes. Such suspension grossly undermined the rule of law as well as our rights to justice, equality and human dignity. In striking down the guidelines, (the amendments to the National Prosecution Policy dated 1 December 2005 made in terms of s 179(5) of the Constitution) ("the amendments") the High Court found that they amounted to a "copy-cat" of the TRC amnesty process.¹ Far from the guidelines constituting "important" or "special considerations" the High Court found such considerations to be irrelevant for purposes of taking prosecutorial decisions and that they were "a recipe for conflict and absurdity".²

In your paragraph 7 you state that the court case which struck down the amendments to the Prosecution Policy also disabled the "structures for the investigation of such cases." Presumably this was stated in order to give the impression that the investigative capacity had to be rebuilt thereby causing further delay. I am advised that the striking down of the amendments had no such effect. In terms of paragraph B4 of the amendments responsibility for oversight of investigations and institution of prosecutions of such cases remained with the PCLU. Under paragraph B6 the PCLU was to be "assisted" by "senior designated officials" from the National Intelligence Agency, the Department of Justice, the SAPS and the then Directorate of Special Operations. This so-called assistance was presumably to advise the PCLU on who should receive immunity under the amendments. The then Director of the PCLU complained bitterly, in a meeting attended by my legal representatives, that the so called "senior designated officials" were never available to meet and as a result the process had ground to a halt. If anything the striking down of the amendments removed the investigatory constraints as well as the unlawful interference of other bodies in the constitutional duties of the NPA.

¹ Judgment, par 15.4.3.1, *Thembisile Nkadimeng and Others vs. The National Director of Public Prosecutions and Another* (TPD case no 32709/07)

² Judgment, par 15.5.3

TP (1)

I am advised that the content of your paragraph 14 is not a correct interpretation of the applicable international criminal law. The suggestion that the Constitutional Court in *S v Basson* 'specifically refrained from directly that he be charged for Geneva Conventions crimes' because 'international crimes require domestic legislation before they can become enforceable in South Africa' is wrong. In fact the Constitutional Court explicitly refrained from addressing the question of whether prosecutions can be brought directly under customary international law, noting: "We have not found it necessary to consider whether customary international law could be used either as the basis in itself for a prosecution under the common law, or, alternatively, as an aid to the interpretation of section 18(2)(a) of the Riotous Assemblies Act."³ On the question of whether South African law allows for prosecutions under customary international law *directly* through the common law (in the absence of implementing legislation) I am advised that section 232 of the Constitution supports such prosecutions. In any event Parliament has recently settled this question with the adoption of the *Implementation of the Geneva Conventions Act 8 of 2012*, which contains a provision stating:⁴

"Nothing in this Act must be construed as precluding the prosecution of any person accused of having committed a breach under customary international law before this Act took effect".

In light of this, the references to a temporal limitation on the *Implementation of the Rome Statute Act 12 of 2002* and the *Torture Convention Bill* are misplaced, as specific legislation is not required in order to prosecute a crime that was "an offence under ... international law at the time it was committed ...".

The factual claim in your paragraph 15 that the person who alleged he had been influenced to change his version is deceased is incorrect. That person is Norman "Scotch" Mkhonza. He is not deceased as claimed. Moreover your assertion that the charge of 'defeating the ends of justice' would have prescribed in 2006 cannot be correct. The conversation in question took place on 10 February 1996. Section 18 of the Criminal Procedure Act provides for the lapsing of the right to prosecute after 20 years which means that such a charge would only prescribe in 2016.

The claim made in your paragraph 17.2 that the explosions at the power stations and railway lines on 10 September 1983 was "completely overlooked" by the TRC is not correct. Since those explosions occurred shortly before Nokuthula was kidnapped these facts were put before the TRC's Amnesty Commission as it established the falsity of the version of the white Security Branch officers. The officers claimed that the explosions were instigated as a result of information provided to them by Nokuthula. This version is false if the explosions occurred before Nokuthula's kidnapping on 11 September 1983. In relation to the arrest of Justice Ngidi, the former Mayor of Sandton, I am advised that there was nothing stopping the police from carrying out elementary inquiries that would have easily demonstrated that Ngidi's capture did not remotely coincide with the period that Nokuthula was held captive. Accordingly she could not have provided the information that led to Ngidi's arrest as the white officers so forcefully claimed. It took the NPA and the police some 10 years to establish this crucial evidence notwithstanding the fact that the obvious flaw in this version was conspicuously highlighted during the Amnesty proceedings in the late 1990s.

I am advised that the tasks referred to in your paragraphs 17.3 to 17.5 are not good reasons for the delay in the investigation. These are basic tasks that should have occurred many years previously.

³ Footnote 147.

⁴ Section 7(4), ICC Act.

TP 11

I am advised that your assertion in paragraph 21 that it would be pointless placing existing information before an inquest court since the presiding officer would be "*constrained not to hold inquest until the matter has been properly investigated*" is not correct. In the first place this matter has never been properly investigated. Pursuing a few inquiries at the last moment is not going to remedy this state of affairs. An inquest has primarily an investigative function. Section 8(1) of the Inquests Act authorizes the presiding officer of an inquest court to, of his or her own accord, or at the request of any person with an interest, to subpoena any person to give evidence or produce any document or thing at the inquest. Accordingly an inquest is well placed to remedy shortcomings in an investigation, such as this one.

I assume in your paragraph 23 that the section you refer to in the Inquest Act is section 6(c) and not 6(3) which does not exist.

I now deal with the claim that it would be difficult to charge Radebe at this stage if he had been made a witness previously (PLCU Letter addressed to the Directorate of Priority Crimes dated 25 March 2010). I am advised that a person previously approached as a witness (presuming this was the case in respect of Radebe) can be subsequently charged and prosecuted. This is particularly the case where the statement made by such witness is patently false. Radebe has been blatantly untruthful in respect of his statement. He has not been given any express or implied immunity from prosecution. I am further advised that If Radebe agrees to be a cooperating state witness he can be warned in terms of s204 of the Criminal Procedure Act. He can be prosecuted subsequently if found to be mendacious; and indeed he can be charged directly if he refuses to fully cooperate at the outset. In any event the concern expressed appears to be an academic one since the letter dated 27 October 2010 from RC Macadam to Captain Masegela discloses that the Radebe's statement in the docket is "*unsigned and unattested*".

I note that Advocate Macadam is of the view that establishing whether Radebe was transferred to the Vehicle Branch in early September 2003 will determine whether he was being truthful about his presence at the farm. I am constrained to advise that mere evidence of a transfer to another unit does not in itself mean that he was not at the farm at the relevant time. Evidence of physical presence at another location will be required. I note that the 27 October 2010 letter is silent on Radebe's evidence of the actual kidnapping of Nokuthula where it is clear that he is lying.

In the circumstances I am of the firm view that there has been more than ample time to carry out these investigations, which ought to be in its final stages. I note that you state that this case is being attended to diligently in order to finalize the outstanding tasks. In this regard I am concerned that as recently as 4th and 8th February the investigating officer advised me that he had received no instructions to continue with the investigation.

I wish for a decision to be made one way or the other within the very near future. In view of the inordinately long delay I have sought legal advice from my legal team on how best to ensure that such decision is taken within a reasonable time. While they have advised that legal action is a real possibility they have also indicated that I should permit you and the police a reasonable time period within which to complete those investigations that are strictly necessary.

Your letter of 31 January 2013 does not disclose what these outstanding tasks are aside from the perusal of mortuary records. The letters of Advocate Macadam addressed to the investigating officers in March and October 2010 do disclose outstanding tasks. I would have thought that after more than 2 years these tasks would have been finalized by now. If they have not been attended I must insist on an explanation as to why not. The tasks include the tracing of missing documents and items, the drawing of a map and the taking of some 4 statements. I am entitled to know which

TP 9

of these tasks have been completed and which ones are outstanding. I further wish you to advise me approximately how much more time is required to finalize the investigation.

I wish to place on record that I will no longer accept inordinate delays and that my rights in this regard are reserved. I have requested some of my legal representatives to meet with Advocate Macadam and Captain Masegela on 18 February 2013 in order to discuss what outstanding tasks are strictly necessary for purposes of completing the investigation; what a reasonable deadline would be for such tasks; and the criteria that the NPA will employ for deciding whether to prosecute or refer to a formal inquest.

Yours sincerely,

T P NKADIMENG

Copy to: Advocate Chris Macadam, Priority Crimes Litigation Unit
Captain Masegela, South African Police Service

TP

**Office of the
National Director of Public
Prosecutions**



12 February 2013

Ms TP Nkadameng
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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)**

1. I acknowledge receipt of your letter, dated 11 February 2013 and confirm that Adv Macadam of my staff will be meeting with your lawyers on Monday, 18 February 2013 to discuss all the issues relating to the investigation of the matter.
2. I trust that a number of issues raised in your letter will be addressed in this meeting and therefore I do not propose to respond to all the matters which you raise. Since however you have raised the possibility of instituting legal action, I confirm that my failure to respond paragraph-by-paragraph to your letter in no way constitutes an admission of the various complaints you have made.
3. I however reconfirm my view that the interests of justice require that the case be fully investigated before a decision to prosecute can be taken and if the decision is not to prosecute, to arrange for the holding of an inquest.

Yours sincerely

**DR MS RAMAITE SC
ACTING NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

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Organised Crime
Directorate for Priority Crimes Investigations
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Attention: Col N Xaba

Email: XabaN@saps.org.za

Dear Col Xaba

NOKUTHULA SIMELANE

Further to my earlier request for further investigations, the following also requires attention:

1. Efforts must be made to trace Nompumelelo Zakade, whom it is alleged supplied the information which led to the arrest of Justice Ngidi and not Nokuthula Simelane. It is alleged that this person is well known to Justice Ngidi and he should be able to assist in having her traced. A full statement should be obtained from her regarding all the issues relevant to the matter pertaining to Nokuthula Simelane.
2. At the amnesty hearing, Nimrod Veyi testified that he had knowledge of three houses in Klipspruit and one in Rustenburg. It must be



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TP 07



"Together beating the drum for service delivery"

established whether he is in a position to point these safe houses out and if any houses are identified, then the Missing Persons' Task Team must be requested to do an assessment as to whether an exhumation should be carried out at any one of them.

3. Norman Mkhonza testified at the amnesty committee that there was a safe house in Klipspruit West, which was used by Strongman Bambo. Evidence was led at the amnesty hearing that Mr Bambo was also present on the farm. He must be requested to point this house out and again the Missing Persons' Task Team must be requested to conduct an assessment.
4. A Mr Gilbert Twala testified at the amnesty hearing that before the disappearance of Nokuthula Simelane, she attended meetings with himself and Simphiwe Nyanda. Mr Nyanda is the former Chief of the SANDF and is currently an adviser in the Office of the President. He should be approached and asked whether he has any information which could shed light on Nokuthula Simelane's disappearance. If so, an affidavit must be obtained.

Kind regards



ADV RC MACADAM
SENIOR DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS

TP 02

Simelane Meeting – 18 February 2013 – National Prosecuting Authority, Pretoria**Minutes**

In attendance:

- Alan Wallis - SALC
 - Robin Palmer - UKZN
 - Chris McAdam (CM) – PCLU
 - Susanne Bukau – PCLU
 - Colonel Xaba (CX)– The Hawks
 - Captain Masagela (M) – SAPS
-
- CM provided an overview of the case, emphasizing that he was only seized with the matter in 2010. He again mentioned tasks that he had identified for M (As outlined in the 2010 letter in our possession) to carry out and that of those tasks none had been properly carried out or carried out at all. Whilst he didn't explain why this case wasn't moved on before he was seized with it, he gave the impression that he is committed to ensuring that this matter be prioritized and investigated as fully as possible so that they can institute a prosecution or to request that an inquest be set up.
 - We did not get the impression that they did not want to pursue this case or that they have attempted to cover the case up. The lack of action on their part appears to be due to it not being prioritized by the SAPS, and inadequate follow up on the part of the NPA.
 - It was encouraging to see CX from the Hawks at the meeting, and he has been fully briefed on the matter. We hope that will provide oversight within the SAPS investigations.
 - CM showed us the docket, which consists of one lever arch file.
 - Whilst the tasks he identified in 2010 still need to be pursued CM identified a number of avenues that should be immediately undertaken which could render some of the identified tasks unnecessary. These tasks are aimed at determining course of events that led to the disappearance of Simelane and addressing inconsistencies. Specifically:
 - Further information was obtained by Captain Leask that there was another farm in Westonaria, near the farm that Simelane was held and that Simelane which have been taken to and buried there. A former police officer by the name of Sylvester has been identified as a person that may have knowledge of this farm.
 - Additional safe houses in and around Rustenburg have been identified.

TP 11

- In respect of Coetzee's, Pretorius' and Mong's alibi that they could not have been involved in Simelane's month long torture because they were involved in the planting of explosives at power stations, CM located and showed us two dockets on two explosions that occurred around Simelane's kidnapping. The explosions took place at two Eskom substations (Randburg – docket no: 387/09/83 and Fairlands – docket number 100/09/83) on 10 September 1983. A day before Simelane's kidnapping on 11 September 1983.
- CM located Justice Ngidi's detention files, and the dates of his incarceration and escape, in his view, raise questions about the veracity of his version of events.
- CM informed us that Radebe is a Johannesburg City Counselor.
- In light of this information CM has proposed the following:
 - Visit the 'new' farm and obtain a statement from Sylvester as well as visiting safe houses;
 - Re-interview Justice Ngidi and Radebe;
 - Approach Coetzee, Pretorius and Mong. Using the new bombing information regarding their alibi and statements made by Mong, CM believes that Mong should be approached to become a section 204 witness. This approach will have to be done carefully and may involve their lawyers. Robin mentioned that he would like to be present at any further communications with Mong or to discuss strategy before hand,
- CX agreed to make another investigating officer available to M.
- A follow up meeting has been tentatively set up for **30 May 2013**.
- CM agreed that if they are not able to take investigation further he agrees that there should be an inquest and that it should be presided over by the a judge and not a magistrate.
- Robin will provide research on inquests in respect of which jurisdiction could be used and whether it is possible to request a judge led inquest instead of magistrate led inquest.
- All involved are happy to be contacted regarding progress.

TP 17

THEMBISILE PHUMELELE NKADIMENG

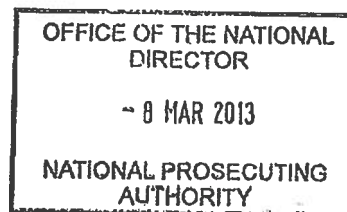
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6 March 2013

TO:

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National Prosecuting Authority
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AND

Dr. MS Ramaite
Acting National Director of Public Prosecutions
National Prosecuting Authority
Private Bag X752
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Dear Adv. Macadam,

OUTSTANDING INVESTIGATIVE TASKS IN THE INVESTIGATION INTO THE KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 1469/02/1996)

I want to thank you, and Colonel Xaba and Captain Masegela, for meeting with Adv. Robin Palmer and Allan Wallis on Monday 18 February 2013 to discuss the investigation in the case of Nokuthula Simelane. They advised me that they were encouraged by your assurances that this matter will be prioritised and that it will receive the PCLU's immediate attention through the completion of specific tasks within an agreed upon timeframe.

TP 87

I note from your letter dated 13 February 2013 addressed to the Commander of the Directorate of Priority Crimes Investigations, which you forwarded to Adv. Palmer on 5 March 2013, that certain instructions were given to Col. Xaba. It however came as a surprise, following communications between Captain Masegela and I on 26 February and 5 March 2013 that Captain Masegela is yet to receive any instructions from your office regarding the investigative priorities that you outlined in the meeting. I am advised that Captain Masegela joined the meeting on 18 February late and you had indicated that you would appraise him of what tasks should be completed and how they were to be prioritised. I would be grateful for your explanation as to why the investigating officer has not been given any further instructions.

At our meeting you informed us of the following:

- The majority of tasks identified in your letter to Captain Masegela dated 27 October 2010 still need to be pursued.
- You identified a number of avenues that should be immediately pursued which could render some of the previously identified tasks unnecessary. These tasks are aimed at determining the course of events that led to the disappearance of Ms. Simelane and addressing the following issues and inconsistencies:
 - Further information was obtained by Captain Leask that there is another farm in Westonaria, near the farm that Ms. Simelane was held and that Ms. Simelane could have been taken to and buried there. A former police officer by the name of Sylvester has been identified as a person that may have knowledge of this farm.
 - Additional safe houses in and around Rustenburg and Westonaria have been identified.
 - In respect of Coetzee's, Pretorius's and Mong's alleged alibi that they could not have been involved in Ms. Simelane's torture and disappearance because they were involved in the planting of explosives at power stations you located and showed me two dockets relating to two explosions that occurred around the date of Ms. Simelane's kidnapping. The explosions took place at two Eskom substations (Randburg – docket no: 387/09/83 and Fairlands – docket number: 100/09/83) on 10 September 1983. These occurred a day before Ms. Simelane's kidnapping on or around 11 September 1983.
 - You indicated that Justice Ngidi's detention files had been located and the dates of his incarceration and escape and are of the view that this raises questions about the veracity of his version of events.
 - You disclosed that Radebe is a Johannesburg City Counselor.

In light of the above you identified the following tasks:

TP 17

- That the investigating officers will visit the 'new' farm and obtain a statement from Sylvester. The investigating officer will also visit the safe houses;
- The investigating officers will interview Justice Ngidi and Radebe again;
- The investigating officer or members of the PCLU will speak to Coetzee, Pretorius and Mong. You also recommended approaching Mong to become a section 204 witness.

Additionally:

- Colonel Xaba agreed to make an additional investigating officer available to assist Captain Masegela;
- 30 May 2013 was tentatively agreed upon as a date on which to hold a follow-up meeting.

I note that in your letter to Col. Xaba (dated 13 February 2013) you asked him to carry out some but not all of the abovementioned tasks:

- Trace one N Zakade who could help in tracing Justice Ngidi;
- Identify certain safe houses for purposes of establishing whether exhumations should take place there;
- Interview Simphiwe Nyanda.

Please advise who is to carry out the additional tasks.

I have a number of queries that warrant your consideration and response and which may assist the investigation:

- In respect of the 'new' farm identified, there is no evidence that a second farm featured or played a role. The Security Police used multiple farms in their operations. Whilst this lead should be followed, the investigation of this information can be quickly finalised and must not be allowed to cause further and unnecessary delays or divert resources from other priorities unless there is specific evidence as to the whereabouts of the mortal remains of Ms Simelane
- Proving the existence of safe houses that were used by Coetzee and his team of Security Policemen during 1983 will contradict versions of events given by officers who testified that they did not use or have safe houses in 1983. This investigation is therefore important and can be quickly accomplished.
- Justice Ngidi's detention files are relevant in respect of the dates of his incarceration. In this regard I would ask you to provide us with the exact dates contained in Justice Ngidi's detention files and the reason these files cause you to question the veracity of his version.
- The bombings orchestrated by Coetzee et al. and the case dockets you located do not represent new evidence as these bombings on 10 September 1983 were conceded in their amnesty hearings.

TP 17

- In respect of the intention to re-interview Radebe it should be clarified whether you intend to speak to Radebe as a witness or a suspect. This will have an important impact on the case and should be carefully considered.
- Re-interviewing Mong solely on the bombing dockets is not advisable as this has already been conceded by Coetzee et al. Mong can be approached to become a witness to avoid the risk of prosecution. However any approach to Mong or others implicated must be done with the utmost care so as to avoid negatively impacting the investigation.
- In respect of the proposed interview with Simphiwe Nyanda we believe that the only significant matter to canvass with him is whether, to his knowledge, Nokuthula ever returned to Swaziland as claimed by the suspects.

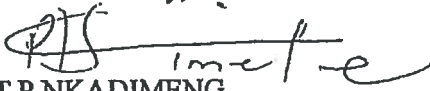
Please urgently consider my concerns and suggestions outlined above and let me have your responses per return.

I further wish to place on record the telephone conversation you held with Adv. Palmer on 5 March 2013. During this conversation you confirmed that:

- You are being updated on a weekly basis by the investigation team;
- You will keep us updated by email (supplied) on progress;
- You will canvass with us the use of certain persons as possible state witnesses once the investigation has reached a more advanced state.

I attach a copy of a timeline of the investigation into the disappearance of Nokuthula which reflects the terrible neglect received by this case. I confirm that I expect these investigations to be finalized by the end of May by which time a decision must be taken either to prosecute or establish a formal judicial inquest. I look forward to hearing from you.

Yours sincerely,


T P NKADIMENG

Copy to: Captain Masegela, South African Police Service
Colonel Xaba, Directorate of Priority Crimes Investigations -- XabaN@saps.org.za
Advocate Susan Bukau -- sbukau@npa.gov.za

TP

From: Robin Palmer <PALMER@ukzn.ac.za>
Sent: Wednesday, March 13, 2013 10:21 AM
To: Alan Wallis
Subject: FW: Nokuthula Simelane
Attachments: 20130308095040770.pdf

Alan- Please read and discuss- Robin.

From: Chris Macadam [mailto:cmacadam@npa.gov.za]
Sent: Wednesday, March 13, 2013 10:02 AM
To: Robin Palmer
Cc: Susan Bukau
Subject: Nokuthula Simelane

Dear Robin

note with concern the contents of this letter. It contains several serious incorrect statements about what was discussed at our meeting, the most serious being the claim that I indicated that Ngidi was being untruthful. If any legal challenge is brought to any decision I may take in this matter, this document would have to be discovered and if subsequently Ngidi were to be a key witness in any proceedings, then his integrity will have been wrongfully brought into dispute and I will then have to become a witness in those proceedings. In fact, what I said was that in the light of the dates of the arrest of Mr Ngidi, a major question mark hangs around the veracity of the versions of certain of the suspects.

Both I and the DPCI must perform our duties without fear, favour or prejudice. In addition, the Courts have ruled that investigations must be conducted in an objective manner and that due weight must also be attached to any exculpatory versions which might assist the suspect's defence.

In the light thereof, I consider it improper to request that I have to give reasons for my decisions that certain matters be investigated (All the more so when there are incorrect statements about what I said.), explain my communications with the investigating officer and supply evidence out of the police docket to the victims. Consequently I am not prepared to accede to any of these requests. If this document were discovered, it would lay the basis for alleging that there was a manipulation of the investigation by persons who have a subjective interest therein.

I confirm that the matter will continue to be fully investigated, covering all the relevant issues raised in the evidence and an attempt will be made to have the investigation finalised by 31 May 2013. I would also be grateful if you could request your client to in future address her concerns with you and that you communicate with me having done the necessary filtering so as to eliminate any contentious issues which could be the subject of litigation.

Kind regards

Chris Macadam

The message was checked by ESET Endpoint Antivirus.

89

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TP 17

Subject: FW: Nokuthula Simelane
Attachments: letter to macadam- proposed response (22-3)- changes (Robin)finalx.docx

From: PALMER@ukzn.ac.za
To: cmacadam@npa.gov.za
CC: frankdutton@hotmail.com; nkadimeng.thembi@gmail.com; yasmin.sooka@gmail.com; nicolef@salc.org.za; alanw@salc.org.za; PALMER@ukzn.ac.za; Gevers@ukzn.ac.za
Subject: RE: Nokuthula Simelane
Date: Sat, 6 Apr 2013 13:25:55 +0000

Dear Chris,

I have extensively canvassed the concerns raised in your email of 13 March 2013 with our client and all members of her legal team, and attach the team's response. I will also call you on Monday 8 April (if suitable) to discuss this and related issues.

Regards,
Robin Palmer.

From: palmer@ukzn.ac.za [<mailto:palmer@ukzn.ac.za>]
Sent: Wednesday, March 13, 2013 10:13 AM
To: Chris Macadam
Subject: Re: Nokuthula Simelane

Hi Chris - I will phone to discuss- Robin.
Sent via my BlackBerry from Vodacom - let your email find you!

From: Chris Macadam <cmacadam@npa.gov.za>
Date: Wed, 13 Mar 2013 08:01:43 +0000
To: Robin Palmer<PALMER@ukzn.ac.za>
Cc: Susan Bukau<sbukau@npa.gov.za>
Subject: Nokuthula Simelane

Dear Robin

I note with concern the contents of this letter. It contains several serious incorrect statements about what was discussed at our meeting, the most serious being the claim that I indicated that Ngidi was being untruthful. If any legal challenge is brought to any decision I may take in this matter, this document would have to be discovered and if subsequently Ngidi were to be a key witness in any proceedings, then his integrity will have been wrongfully brought into dispute and I will then have to become a witness in those proceedings. In fact, what I said was that in the light of the dates of the arrest of Mr Ngidi, a major question mark hangs around the veracity of the versions of certain of the suspects.

Both I and the DPCI must perform our duties without fear, favour or prejudice. In addition, the Courts have ruled that investigations must be conducted in an objective manner and that due weight must also be attached to any exculpatory versions which might assist the suspect's defence.

TP 17

In the light thereof, I consider it improper to request that I have to give reasons for my decisions that certain matters be investigated (All the more so when there are incorrect statements about what I said.), explain my communications with the investigating officer and supply evidence out of the police docket to the victims. Consequently I am not prepared to accede to any of these requests. If this document were discovered, it would lay the basis for alleging that there was a manipulation of the investigation by persons who have a subjective interest therein.

91

I confirm that the matter will continue to be fully investigated, covering all the relevant issues raised in the evidence and an attempt will be made to have the investigation finalised by 31 May 2013. I would also be grateful if you could request your client to in future address her concerns with you and that you communicate with me having done the necessary filtering so as to eliminate any contentious issues which could be the subject of litigation.

Kind regards

Chris Macadam

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(20130406)

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TP 17

Email between Chris Macadam and Robin dated 15 April 2013

From: Robin Palmer [<mailto:PALMER@ukzn.ac.za>]
Sent: 02 May 2013 12:40 PM
To: Helena Zwart (H)
Cc: nicolef@salc.org.za; howardvarney@gmail.com; alanw@salc.org.za
Subject: RE: Nokuthula Simelane

Dear Chris,

I confirm receipt, and shall circulate to other team members. Do you have an update on the current status of the investigation?

Regards,

Robin Palmer.

From: Helena Zwart (H) [<mailto:hzwart@npa.gov.za>]
Sent: Monday, April 15, 2013 3:47 PM
To: Robin Palmer
Subject: Nokuthula Simelane

Dear Robin

With reference to our telcon last Friday, I do not deem it necessary to reply to the last letter from your clients, as we discussed all the issues during the course of our telcon. In the light of the DA/NDPP matter, a number of decisions of the NPA may now be reviewed and I would be obliged to file a record of all the communications which could cause embarrassment and open the doors for allegations.

I confirm that you drew my attention to a Sunday Times article where extracts from one of my letters were quoted. It should be brought to your client's attention that these types of disclosures are potentially prejudicial, as if proceedings are instituted, the other parties may then on the basis of the article require discovery of my internal communications with you and your client.

TP 11

I note that Frank Dutton is being copied on the correspondence. He approached me two years ago, informing me that he had been appointed to investigate the matter on behalf of the family. It may well be necessary for him to provide the investigating officer with a statement outlining what he did.

I confirm that investigations are continuing regarding Radebe's claim to have been transferred to the Vehicle Theft Unit via the relevant police documentation and also locating all the dockets and background information relating to the detention of the various MK members as became relevant at the amnesty hearing.

Checks are also being conducted on the mortuaries in areas relevant to the investigation for any records which might correspond with the missing person.

Kind regards

Chris Macadam

TP 17

From: Helena Zwart (H) [hzwart@npa.gov.za]
Sent: 02 May 2013 02:12 PM
To: Robin Palmer
Subject: RE: Nokuthula Simelane

Dear Robin

There are no new developments at present.

Kind regards

Chris Macadam

From: Robin Palmer [mailto:PALMER@ukzn.ac.za]
Sent: 02 May 2013 12:40 PM
To: Helena Zwart (H)
Cc: nicolef@salc.org.za; howardvarney@gmail.com; alanw@salc.org.za
Subject: RE: Nokuthula Simelane

Dear Chris,

I confirm receipt, and shall circulate to other team members. Do you have an update on the current status of the investigation?

Regards,

Robin Palmer.

TP 7

From: Robin Palmer
Sent: 17 May 2013 04:25 PM
To: Helena Zwart (H)
Subject: RE: NOKUTHULA SIMELANE

Thanks Chris- I will report back. Please let me know about timelines at the end of May.

Regards,

Robin.

From: Helena Zwart (H) [hzwart@npa.gov.za]
Sent: 17 May 2013 04:21 PM
To: Robin Palmer
Subject: RE: NOKUTHULA SIMELANE

Dear Robin

I agree that it is not necessary to meet. The alibi of Mr Radebe has been investigated and it was established that he was only transferred to the Vehicle Theft Unit in September 1984 and therefore he was still at the Security Branch at the time when Ms Simelane was on the farm at Northam.

The safe houses in use by the Soweto Security Branch at the time have all been identified and all have been eliminated as having exhumation potential, save for the smallholding at Westonaria where consideration is being given to the feasibility of a probe. The detention files relating to Mr Ngidi have been obtained from Justice. They give the case reference number of the docket upon which he was arrested, as well as dates of his detentions. Investigations are now in progress to locate the docket and other evidence whereupon he will be interviewed. The detention files relating to Gilbert Twala are still awaited from Justice. The original under-cover agent, Scotch, has been traced and will be re-interviewed as it would appear that he has also knowledge relating to the arrest of the MK members, which is central to the defence put up by Coetzee, Pretorius and Mong. The outcome of these investigations will determine whether it is still necessary to approach General Nyanda for a statement.

Work is in progress regarding checking mortuary records for entries which could correspond to the physical description of Ms Simelane and the time of her disappearance and once more information is forthcoming, consideration will be given as to whether exhumations are

TP N

necessary. The outcome of these investigations will determine the necessity or otherwise of having to conduct the original queries directed by myself.

Kind regards

Chris

From: Robin Palmer [mailto:PALMER@ukzn.ac.za]
Sent: 17 May 2013 03:46 PM
To: Helena Zwart (H)
Cc: Chris Macadam
Subject: RE: NOKUTHULA SIMELANE

Dear Chris,

I am out of the country for a while- perhaps you can update me on progress, and actions still to be taken with projected time-frames, at the end of May, and I will report to the other team members- a meeting seems unnecessary at this stage. I will be back in mid-to late June if a meeting is indicated at that stage.

Regards,

Robin Palmer.

From: Helena Zwart (H) [hzwart@npa.gov.za]
Sent: 17 May 2013 02:40 PM
To: Robin Palmer
Cc: XabaN@saps.org.za; Susan Bukau
Subject: NOKUTHULA SIMELANE

Dear Robin

With reference to our undertaking to meet at the end of May 2013, I would like you to indicate your availability. We are not in a position at this stage to have finalised all the investigations, but a number of key aspects have been dealt with and the remaining investigations should be finalised within a reasonable period of time.

TP 17

Kind regards

Chris Macadam

TP 9

To Advocate C MacAdam ,

NPA.

Re Nokuthula Simelane

Dear Chris

I write on behalf of the legal team in this matter. In response to your indication that you are not satisfied that the investigation has progressed sufficiently to make a decision in this matter, I attempted to discuss this matter telephonically with you, but was unable to do so due to your involvement in an urgent application and court proceedings. Mrs Helena Zwart indicated that you would be available in the late afternoon of 26 June to discuss the matter but on calling her, she informed me that you were still not available. I did try your cell number and will try to speak to you again tomorrow morning, i.e. 27 June 2013.

In essence, the issues I wish to canvass on behalf of the family are the following:

1. *Finalisation of investigations for decision on the docket*

Following early meetings with yourself and the police investigators in this matter, you did indicate that a decision would be made by the end of May 2013. This date has now passed and we still have no indication on what further investigative steps are envisaged before the NPA will be in a position to either make a decision to prosecute one or more alleged perpetrators, or to refer the matter for a formal inquest as this matter has now dragged on for the best part of 13 years. We respectfully request your urgent indication on what information or investigations you still require to put the NPA in a position to make a decision. In this regard, kindly also indicate how the complainant or any members of the complainant's legal support team can assist to expedite the making of this decision (in particular you did indicate that you would require an affidavit from Frank Dutton). In our view, there appears to be sufficient information and *prima facie* evidence to justify a formal judicial inquest, and we request you to seriously consider whether the matter should be referred for inquest at this stage. As you well know, the fact that the matter is referred for an inquest does not preclude the continuation of any investigations you nevertheless consider necessary.

TP M

2. *The emotional toll on the family and friends of Nokuthula Simelane*

As you can appreciate, the delays in finalising this matter create severe and on-going emotional stress and trauma for the family and friends of Nokuthula. I am sure you will agree that they are entitled to finalisation of the matter and emotional closure if the circumstances of the investigation indicate that no substantial progress is likely, especially given the length of time that has lapsed since the death of Nokuthula.

3. *Specific indications of remaining steps and actions*

We kindly request that any remaining investigative steps and actions that the NPA requires still to be carried out be itemised and linked to specific target dates to prevent this matter from dragging on indefinitely. As requested above, the failure to make substantial progress on reaching these target dates should result in the referral of the matter to a formal inquest if sufficient evidence for a prosecution is not available. In this regard, your undertaking to assist with the motivation for a judicial inquest should there be insufficient evidence for a prosecution, is gratefully noted.

Yours faithfully,



Robin Palmer

(On behalf of the legal support team)

TP 11

LEGAL RESOURCES CENTRE

PBO No. 930003292

Constitutional Litigation Unit • 16th Floor Bram Fischer Towers • 20 Albert Street • Marshalltown, Johannesburg 2001 • South Africa • www.lrc.org.za

PO Box 9495 • Johannesburg 2000 • South Africa • Tel: (011) 836 9831 • Fax: (011) 834 4273

Your Ref:

Our Ref: Our Ref: B Sibiyi

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.

National Office:
 Cape Town:
 Durban:
 Grahamstown:
 Johannesburg:
 Constitutional Litigation Unit:

J Love (National Director), K Reinecke (Director: Finance)
 S Magardie (Director), A Andrews, S Kahanovitz, WR Kerfoot, C May, M Mudarikwa, HJ Smith
 MR Chetty (Director), EJ Broster, FB Mahomed, AJ Richard
 S Sephton (Director), C McConnachie
 N Fakir (Director), T Mhense, C van der Linde
 T Ngcukakobi (Head of CLU), M Bishop, G Bizos SC, J Brickhill, S Nindi, B Sibiyi, W Wicomb

TP 9

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 Krappies 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

TP 7

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.

TP 17

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 Northham. Brits is situated 108 km south east of Northham; and is 68 km east of Rustenburg. A claim made before the Amnesty Committee of the TRC was that Nokuthula was taken from Northham 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

TP 7

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

TP 17

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

TP 17

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

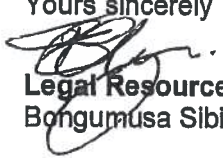
28. The October to December report suggests that there is no end in sight. There is simply no reason why these matters could not have been pursued and resolved in the 12 months since my client sought an inquest.
29. We note that Adv Macdam identified these matters as investigational tasks back in 2010. 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

TP m

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

TP M

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

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- E.3) No answer
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E. 4) No facsimile connection

LEGAL RESOURCES CENTRE

PTD No. 990013-92

PO Box 9485 • Johannesburg 2000 • South Africa • Tel: (011) 833 6931 • Fax: (011) 834 4773

Your Net:
Our Net: Our Net Is Bigger

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

By fax: 012 846 7291

16 January 2014

Dear Mr. Nyanana

KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE (PRIORITY INVESTIGATION): JV PLEIN: 1489/02/1880

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 Simeane 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.

NATURE OFFICE
OUR TIMES
Public
Environment
Information
Conservation

J. Love (Richard) (Director), K. Ragsdale (Director, France)
B. Mayfield (Director), A. Aronson, S. Schwartz, M. Perle, C. Hogg, N. Katsaros, M. S. G. (Director)
F. O'Connell (Director), B. O'Connell, M. O'Connell, A. O'Connell
S. O'Connell (Director), C. O'Connell
J. O'Connell (Director), J. O'Connell, C. O'Connell
J. O'Connell (Director), J. O'Connell, C. O'Connell
J. O'Connell (Director), J. O'Connell, C. O'Connell

TP

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South African Police Service Suid-Afrikaanse Polisie

Private Bag X1500, SILVERTON, 0127

Fax No: (012) 846 4400

Your reference : THE NATIONAL HEAD
Enquiries : Brigadier Kadwa DIRECTORATE FOR PRIORITY CRIME
Telephone no : 012 846 4001 INVESTIGATION
E-mail : dpci.head@saps.gov.za SOUTH AFRICAN POLICE SERVICE

Mr Bongumusa Sibiya
Legal Resources Centre
Constitutional Litigation Unit
JOHANNESBURG

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

Your letter dated 25 September 2013 bears reference.
Since the Legal Resource Centre has been dealing directly with NPA (Priority Crime Litigation Unit) regarding this investigation, the DPCI investigator was of the opinion that you were well informed about the developments of the case. The last correspondence was sent on the 3rd of December 2013 by NPA to your office.

Nevertheless, the DPCI will compile a comprehensive report in consultation with all the relevant stakeholders involved in this investigation. The entire investigation is based on the DNA analysis before we could conclude that the bones found in Brits were those of Nokuthula Simelane who disappeared 30 years ago. On the other hand, if results are negative the NPA will decide whether according to the evidence available the formal inquest could be held or not.

The comprehensive report will be submitted to your office by the end of January 2014 which will cover all the aspects raised in the letter.

Kind regards,


NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
A DRAMAT

Date: 2014-01-16

LIEUTENANT GENERAL

TP 17

Your Ref: JB/ CAS: 1469/02/1996
Our Ref: Our Ref: B Sibiya

Lieutenant General A Dramat
Deputy National Commissioner: Directorate for Priority Crime Investigation
No 1 Cresswell Road
Silverton
Pretoria
By fax: 012 846 4400; and

Attention: Brigadier Kadwa
By fax: (012) 846-4400; and
By email: kadwaE@saps.gov.za

26 February 2014

Dear General Dramat

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

1. We thank you for your letter dated 10 February 2013 in response to our letter dated 26 September 2013.
2. My client is disturbed to note that you do not accept any responsibility for the lengthy delay in finalizing this matter, or at least the delay of nearly 4 years, being the period from 25 March 2010 when the Directorate for Priority Crimes Investigation (DPCI) was given the file. Indeed you do not acknowledge that there has been any delay at all.
3. Since you have acknowledged that the DPCI was seized with this investigation since March 2010 my client holds you and your department responsible for failing to take expeditious steps to finalize this long outstanding investigation. Your letter provides no justifiable explanation for such delay. Your neglect has caused my client and her family considerable suffering and emotional anxiety. Moreover, such

neglect constitutes a great disservice to the memory of the late Nokuthula Simelane (Nokuthula) who gave her life for the struggle for freedom and democracy in South Africa.

4. It is apparent from your letter that, notwithstanding the special circumstances of this case, it is still not being prioritized or treated as urgent. This conclusion is premised on the following:

- 4.1 The DNA from the Brits skeletal remains have not as yet been sent for testing to Bosnia because the police have still not yet received approval to incur such expense. A second sample has not even been secured should approval be granted;

- 4.2 The Westonaria plot has not been evaluated let alone excavated;

- 4.3 Additional 'manpower' has not as yet been assigned to the investigation;

- 4.4 The four mortuary entries have not yet been acted upon i.e. graves have not been identified and no decision has been taken as to whether or not to exhume and conduct DNA testing; and

- 4.5 The DPCI refuses to commit to specific time frames.

5. If past conduct is anything to go by, there is no end in sight to this investigation. The basic investigation into the disappearance of Nokuthula has not been completed; neither have the lines of inquiry agreed to between Advocates Macadam and Palmer during February 2013 been finalized.

6. We note your statement that, but for '*a significant new development*', the agreed date for finalising the investigation, the end of May 2013 would have been met. This development related to the discovery of skeletal remains of a young woman in the Brits area, presumably in March 2013. It seemed that but for this development the investigations were on track for completion by the end of May last year. One

TP 0

would have then expected the different lines of inquiry to have been concluded by the end of May, bar the forensic examination of the Brits remains.

7. It appears, however, that the balance of the investigation ceased following the discovery of the said remains. This conclusion can be drawn from a consideration of your letter as well as that of Adv. Abrahams of the Priority Crimes Litigation Unit (PCLU) dated 9 December 2013. The letter of Adv. Abrahams disclosed that very little of the agreed investigation had been attended to.
8. By way of example, a central pillar of the investigation has always been the tracing and interviewing of the 16 MK operatives that Willem Coetzee and Anton Pretorius claimed were arrested as a result of Nokuthula's cooperation. In October 2010 Adv. Macadam set this as one of the tasks to be carried out by the DPCI. According to the letter of Advocate Abrahams' dated 9 December 2013 this particular task had not yet been accomplished. This was his observation, more than 3 years after the instruction was given and some 9 months after the discovery of the skeletal remains. Many of these 16 individuals are well known personalities, easy to locate and are available for interview by investigators.
9. Your letter is oddly silent as to why this key aspect of the investigation could not be completed by end of May 2013, or soon thereafter. You confirm this lapse in your letter where you advise that "*(p)ending the forensic results, the investigating officer will continue to focus on the investigations identified by Advocate McAdam*". Since you add that the investigations are "*quite extensive*" and that it may be necessary to "*assign additional manpower*" we must conclude that as of February 2014, some 11 months after the discovery of the remains, little or nothing has been done in relation to the said investigations.
10. We are advised that a period of 3 years and 4 months (since the tasks set by Adv. Macadam in October 2010) is more than sufficient time to have completed these investigations. This is irrespective of whether or not skeletal remains had been found.

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11. We point out that that there is no apparent reason why the Brits remains should be regarded as "*significant*". No reason has been advanced as to why such discovery justifies the delay in completing the agreed investigations. The discovery of remains of a young woman is not an uncommon occurrence in South Africa. Apart from age and gender there is apparently no other link between the remains and Nokuthula. There is accordingly only a remote possibility that the remains may be identified as Nokuthula. While there is a need to establish the identity of the remains such a task should not have halted or slowed all other investigations.
12. The outstanding investigational aspects remain relevant, and still need to be investigated irrespective of whether the remains prove to be those of Nokuthula or not.
13. As matters stand, the balance of the investigation is far from complete. The forensic results of the skeletal remains and the four other bodies (all of which have no meaningful links to Nokuthula) have to be traced, exhumed, DNA samples obtained, procurement procedures completed, dispatched to Bosnia and then await results that will take at 6 months or more.
14. In the meantime time marches on and takes its toll on witnesses and suspects. Time in this case is critical because we have already had a delay running into decades. As a result our client and her family may be deprived of a meaningful legal conclusion to Nokuthula's death.
15. In the circumstances, we seek your answers to the following questions:
 - 15.1 Have the investigative tasks set by Adv. Macadam on 10 October 2010 been diligently conducted at all times?
 - 15.2 Did the discovery of the skeletal remains at Brits cause the investigations to be neglected, halted or slowed in any way?

We look forward to hearing from you.

TP 17

Yours sincerely

Legal Resources Centre, Constitutional Litigation Unit, Johannesburg
Per: Bongumusa Sibiya

Copy to: Advocate S K Abrahams, Acting Head: Priority Crimes Litigation Unit
By fax: (012) 845 6337

Advocate C Macadam, Priority Crimes Litigation Unit
By fax: (012) 845 6337; and
By email: cmacadam@npa.gov.za / hzwart@npa.gov.za

TP 7

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
1499	Memory TX	0128464400	P. 5	OK	
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Reason for error
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E.5) Exceeded max. E-mail size
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E. 2) Busy
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LEGAL RESOURCES CENTRE

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PO Box 9465 • Johannesburg 2010 • South Africa • Tel. (011) 833 8531 • Fax (011) 834 4273

Your Ref: JEM/ CAS: 1489/02/1908
Our Ref: Our Ref: B 844/y

Lieutenant General A Dramat
Deputy National Commissioner: Directorate for Priority Crime Investigation
No 1 Crosswell Road
Silverton
Pretoria
By fax: 012 846 4400; and

Attention: Brigadier Kadwa
By fax: (012) 846-4400; and
By email: kadwaE@eaps.gov.za

26 February 2014

Dear General Dramat

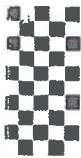
KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA
AURELIA SIMELANE (PRIORITY INVESTIGATION: JV PLEIN: 145902/1996)

1. We thank you for your letter dated 10 February 2013 in response to our letter dated 26 September 2013.
2. My client is disturbed to note that you do not accept any responsibility for the lengthy delay in finalizing this matter, or at least the delay of nearly 4 years, being the period from 25 March 2010 when the Directorate for Priority Crimes Investigation (DPCI) was given the file. Indeed you do not acknowledge that there has been any delay at all.
3. Since you have acknowledged that the DPCI was seized with this investigation since March 2010 my client holds you and your department responsible for failing to take expeditious steps to finalize this long outstanding investigation. Your letter provides no justifiable explanation for such delay. Your neglect has caused my client and her family considerable suffering and emotional anxiety. Moreover, such

Michael O'Brien
Cape Town
District:
Gauteng
Joburg
Construction / Marine /

[illegible]

TP 9



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South African Police Service Suid-Afrikaanse Polisie

Private Bag	X1500, SILVERTON, 0127	Fax No:	(012) 846 4400
Your reference :	JV Plein 1469/1996	THE NATIONAL HEAD	
Enquiries :	Brigadier Kadwa Colonel Xaba	DIRECTORATE FOR PRIORITY CRIME INVESTIGATION	
Telephone no :	012 846 4372	SOUTH AFRICAN POLICE SERVICE	
E-mail :	dpcl.head@saps.gov.za		

Legal Resources Centre
PO Box 9495
JOHANNESBURG
2000

Dear Ms van der Linde

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA
AURELIA SIMELANE: JV PLEIN 1469/02/1996.**

I am in receipt of your letter dated 10 July 2014 and have noted the contents thereof.

It is unfortunate that your letter once again persists with the suggestion of inaction on the part of the investigators and the allegation that your client is not kept informed of developments; both of which are denied. While I do not deem it necessary to respond to each and every allegation contained in your letter under reply or your letter dated 26 February 2014, it needs to be pointed out that the allegation that the investigating officer has only contacted your client once during the last six months is disputed.

I am advised that contrary to this allegation, the investigating officer was in contact with your client on a number of occasions and that during this period she in fact visited him at his office where he showed her the docket and explained to her in detail the progress which had been made. According to the investigating officer your client expressed her relief that she had seen that the investigation was progressing and that she appeared to be satisfied with the progress made. I am also advised that shortly after receipt of your letter dated 26 February 2014 they had spoken and that your client had agreed that instead of continuous correspondence it would be more expedient for a meeting to be arranged where the matter could rather be discussed. I am furthermore advised that she undertook to take this matter up with yourself and to arrange a meeting towards the end of April 2014. No feedback was however received.

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KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NOKUTHULA AURELIA SIMELANE:
JV PLEIN 1469/02/1996.

In addition to the above, I am advised that the investigating officer was also in telephonic contact with your client on 20 March, 3 April, 8 April and 11 May 2014. The last contact between your client and the investigator was during June 2014 when he contacted her whilst on leave, to inform her of this fact and to assure her that the investigation would continue in his absence. I am advised that a good relationship exists between the investigating officer and your client and, as such, the investigating officers surprise at being confronted with your letter, is, in the circumstances, understandable.

As regards the DNA results, I may inform you that the laboratory in Bosnia has completed the tests and that the investigating officer received notification on 14 July 2014 that the samples provided by Ms Simelane's family are not consistent with the samples obtained from the skeletal remains which were uncovered.

Since my previous letter, extensive investigations have been conducted and the case docket has in view thereof recently been submitted to the National Prosecuting Authority for consideration and further instructions, if any.

In conclusion it needs to be reiterated, that the DPCI is, without compromising on the quality of the investigation, committed to finalising the same as soon as possible. The DPCI is also committed to building forth on the good relationship which already appears to exist between your client and the investigating officer. Accordingly I support the agreement reached between them that a meeting to resolve any issues you may have/ clarity which you may need is the preferable route to follow in order to ensure a common understanding of the matters at hand and the issues which need to be dealt with. You are therefore at liberty to contact the investigating officer's commander Colonel Xaba at telephone number 0798899582, should such a meeting be required.

Your cooperation in this regard will be appreciated.

Kind regards,


LIEUTENANT GENERAL
NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
A DRAMAT
Date: 20/4-07-17

TP 9

**MEETING WITH THE DPCI REGARDING THE CASE OF NOKUTHULA
SIMELANE 31 JULY 2014**

ATTENDEES

Frank Dutton

Thembi Nkadimeng

Angela Mudukuti

Carien Van Der Linde

Colonel Xaba (Director, Directorate for Priority Crime Investigation –SAPS)

Captain Masegela (Investigating Officer)

SUMMARY

The meeting followed mostly a question answer format with Frank asking for details about the investigation. The docket was handed to the PCLU on 14 July 2014 and Captain Masegela and Colonel Xaba are of the opinion that investigations are complete.

CLARIFICATION OF TEAM COMPOSITION

After brief introductions Colonel Xaba indicated that they had previously dealt with Robin Palmer whom they have not heard from for a long time but that he seems to have been replaced by the LRC. Frank then indicated that Robin is still very much a part of the team. Angela explained the composition of the team and that the letters come on the LRC letterhead but are produced after consultation with the entire team.

STATUS OF INVESTIGATIONS

Delays and Challenges Faced

Captain Masegela began by explaining that he only started investigating the matter in 2010 and struggled to trace all the original documents from the TRC. Throughout the process he maintained direct contact with the Simelane family. He also indicated that the entire process of investigation was done in consultation with Advocate Macadam. All decisions and instructions came from Macadam. He indicated that the investigations have been difficult as many of the senior officials involved have died and the evidence has been hard to obtain. He also felt that the people who were previously investigating the case had failed to do a thorough job otherwise this matter would have been resolved a long time ago. He felt that most of the delays can be attributed to obtaining DNA results from the laboratories in Bosnia and due to the difficult nature of the case. Despite the delays and negative DNA results he indicated that he could leave no stone unturned, making securing DNA results a very important part of the process. After the DNA results were obtained he submitted his entire docket to Macadam on 14 July 2014. They are currently waiting for Macadam to make a decision and/ or give further instructions.

TP 1

Further delays were attributed to the difficulty faced when dealing with uncooperative witnesses. According to Captain Masegela, in order to talk to TRC witnesses one has to go through their lawyers first. He indicated that many of the lawyers took a very long time to respond to his requests. He also expressed disappointment about the tone in our correspondence as it insinuated that he was not adequately doing his work despite the delays being out of his control.

Certificate of Completed Investigations

Frank asked if a certificate indicating that the investigations were complete had been issued. Captain Masegela said that a certificate had been issued but that it came from a different police department. Frank asked if Captain Masegela felt the investigations were complete and Masegela responded affirmatively but qualified the response by making it clear that investigations are complete with respect to instructions and guidance given by Macadam. Captain Masegela also said that, when necessary, he expanded investigations based on leads. Frank asked him again if, as the investigating officer he was satisfied with the investigations. Captain Masegela responded affirmatively.

DNA Tests

Frank raised that General Dramat had indicated that more DNA tests were to be done based on mortuary records and asked Captain Masegela if this had been done. Masegela indicated that it had been done and that they have ruled out the possibility of any of those bodies being that of Nokuthula as they are too old to be her.

Westonaria Plot

Frank asked if they had investigated the burial site at Westonaria. Masegela indicated that they went to the site and there were no more unidentified remains to examine. However, the people at Westonaria will keep him informed should anything else turn up.

Skeletal Remains from Brits

Frank asked what made them think that the skeletal remains at Brits were linked to this case. Captain Masegela indicated that he had received information that a female body fitting the age requirement had been discovered and that he had to ensure that it was not her. Brits is also close to where she disappeared. Thembi then asked if this means that they will continuously check every single female body fitting the age requirement as she felt that this is similar to shooting in the dark. She also indicated that these far-fetched options were time consuming and should not be allowed to prevent the pursuit of more credible leads. She acknowledged that they should leave no stone unturned but this must not be an excuse to waste time. She felt that the SAPS are walking down dark alleys whilst ignoring people like Radebe who could possibly lead them to her remains. Colonel Xaba stated that he agrees with her, but she must understand that they cannot rule out any avenues.

18 MK Operatives

Frank asked if they had interviewed the 18 MK members and Captain Masegela said he knew nothing about 18 MK operatives. He stated that he was only instructed to interview Ngidi, Ngubese, Olifant and Twala. He reiterated that he was never given the names of 18 MK operatives. Frank referred him to the letter from Macadam addressed to Captain Masegela dated 27 October 2010 where this task is specifically mentioned. Masegela denied ever seeing such a letter and repeated that he had followed every single instruction received from Macadam. Frank then went on to explain how finding the 18 MK members is central to the

investigation. During the TRC hearings Coetzee alleged that Nokuthula had turned into a spy for them and that her information led to the arrest of those 18 MK members. Coetzee produced a newspaper displaying the announcement by the Minister of Police that 18 MK members had been arrested. The newspaper date had been removed. Coetzee tried to use this to prove that Nokuthula had been released as a spy and managed to give information that led to the arrests. Later, it was revealed that the date on the newspaper was September 1984 and Nokuthula disappeared in 1983 making it difficult to believe that she had been released as a spy and facilitated the arrests of the 18 MK members.

Captain Masegela then indicated that they had traced Ngidi and he is also supposed to be one of the people betrayed by Nokuthula. Ngidi confirmed that there is no way that Nokuthula could have given information that led to his arrest. Frank then indicated that finding the remaining operatives is important as it will prove that Coetzee lied.

Interviewing General Nyanda

Frank asked if General Nyanda had been interviewed. Masegela indicated that he was instructed by Macadam *not* to interview Nyanda. Frank went on to ask if there were any outstanding tasks and at that point Captain Masegela stated that he felt like he was being questioned in an accusatory manner. Frank apologized and indicated that this was not his intention. He made it clear that he was merely trying to fully understand what had and had not been done. It was at this point that Thembi explained that Captain Masegela had not been copied in any of the letters sent from the NPA to the team. Thembi shared the letters with Captain Masegela to make sure he knew exactly what the NPA had communicated to the team. Captain Masegela then said that there are no outstanding tasks and that if there was anything he was unable to do, for example- interview a man who has already passed away, he attached an affidavit to that effect and any supporting documentation, for example death certificates.

Brigadier Schoon

Frank asked if Brigadier Schoon was still alive and Masegela said yes but that he is very old and hard of hearing.

Extra Resources

Frank asked if Captain Masegela had requested extra resources for this investigation. Captain Masegela said he had and that they had received assistance from a number of departments including the Crime Scene Management team. Colonel Xaba also responded to say that unfortunately one of the people instructed to assist had recently been involved in a car accident.

Prosecution of Coetzee and Pretorius

Frank asked Captain Masegela whether he felt that sufficient evidence existed for the prosecution of Coetzee and Pretorius. Masegela indicated that there could be. Colonel Xaba responded by saying that there is no direct evidence that links them to the crime. Captain Masegela said that Radebe should be charged with kidnapping and torture. Frank then asked if they had been able to speak to Radebe. Captain Masegela indicated that Radebe and his lawyers refused to talk to them as did Coetzee and Mong.

Allegations of Nokuthula becoming a Spy for the Security Branch

TP

Frank explained that the white Security Branch members claimed that they managed to make Nokuthula a spy for them and that they took her to Swaziland and she never returned. Frank stated that this is unlikely because they never circulated Nokuthula as a wanted person after she failed to return to her "handlers". This is peculiar considering they had classified her as a "terrorist". Colonel Xaba said that in 1983 the police did not have the capacity to circulate wanted persons and that that Frank was speaking with modern day technology in mind.

Captain Masegela said that according to Coetzee and Pretorius they turned her into a spy and Strongman (Bambo) took her to the Swaziland border. Bambo was later arrested for another crime and Coetzee and Pretorius panicked as they feared he would implicate them and so they arranged to have him killed.

SWT66

Frank asked if they were able to trace SWT66. Captain Masegela said that they were not able to trace SWT66.

Motsoanyame Commission

Frank asked if they had followed up with Motsoanyame Commission. Captain Masegela said they had not.

TRC cases sent for investigation

Frank said that the NPA wrote to the team indicating that South African president had directed the NDPP to give attention to 500 TRC missing people cases and according to the NDPP website 150 cases were identified for immediate investigation. He then asked Captain Masegela if he was aware of these 150 cases. Colonel Xaba and Captain Masegela both said that they were not aware of 150 cases being investigated but that they knew that a much smaller number of cases were sent for immediate investigation including that of Nokuthula.

Thembi then suggested that a meeting should be organized between the NPA, SAPS and the team so that the NPA can go through the docket with everyone. Thembi indicated that regardless of what the NPA's decision is- this meeting must be held as she would like to know all the details.

Hospital Records in Swaziland

Frank asked if they had looked into hospital records in Swaziland. Captain Masegela said that they had done so in conjunction with Interpol but that nothing useful had turned up.

Angela asked if Macadam had indicated when he would give them feedback and they responded by saying that he did not say when he would get back to them.

CONCLUSION

The meeting ended with Colonel Xaba asking for us all to focus on the positive aspects and he indicated that he would not object to having another meeting with the PCLU present.

TP

Carien van der Linde

From: Carien van der Linde <carien@lrc.org.za>
Sent: 16 September 2014 12:47 PM
To: 'XabaN@saps.org.za'
Subject: KIDNAPPING TORTURE DISAPPEARANCE AND MURDER OF NOKHUTHULA AURELIA SIMELANE / PRIORITY INVESTIGATION; JV PLEIN 1469/02/1996
Attachments: AFFIDAVIT FRANK KENNAN DUTTON.pdf

Dear Col. Xaba

I attach a PDF version of the affidavit of Frank Kennan Dutton, the investigator appointed by the Simelane family.

The original copy is with Frank Dutton, if you should require it.

Warm regards

Carien van der Linde
Attorney

| Tel: 011 836 9831 | Fax: 011 836 8680 | Email: carien@lrc.org.za |
| Mobile: 060 346 9577 |
| Physical : 15th Floor | Bram Fischer Towers | 20 Albert street | Marshalltown
|
| Johannesburg | South Africa |
| Postal: P.O Box 9495 | Johannesburg 2000 |
| Website: www.lrc.org.za |
| Johannesburg | Cape Town | Durban | Grahamstown |



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TP 9

AFFIDAVIT

I, the undersigned

FRANK KENNAN DUTTON

Do hereby make oath and state:

1. I am a South African citizen with ID Number 4905204085088. I reside at 18 Lawrence Place, Waterfall, 3650, KwaZulu Natal.
2. I am an International policing and investigation expert and provide expertise on a consultancy basis internationally as well as locally. I have played leading roles in complex investigations in South Africa and many other countries. Including Bosnia, Croatia, Kosovo, Sudan (Darfur), Afghanistan, DRC, Cameroon, Uganda, Nigeria, Rwanda, Kyrgyzstan, Liberia, Mozambique, Zimbabwe, Brazil and East Timor. I have 38 years of policing experience in South Africa and I was the first head of the Directorate of Special Operations.
3. In 2012 I was awarded the Order of Baobab in Gold by the President of South Africa for my South African and International police work. In particular the President made this award in order to recognize my *"exceptional contribution to and achievement in [my] investigative work as a dedicated and loyal policeman, for exposing the apartheid government's 'Third Force'."*
4. I make this affidavit in response to a request set out in a letter from Colonel Xaba, Commander, Crimes against the State, Directorate Priority Crimes Investigations (DPCI) dated 11 August 2014 to the family's legal representatives, the Legal Resources Centre (LRC). This letter sought an affidavit from me, as the family's



16/9/2014 TP

private investigator, setting out what investigation I had conducted and in particular what statements I had taken. In a letter dated 9 September 2014 the LRC advised Col Xaba that I took no statements. Col Xaba responded by way of a letter dated 10 September 2014 in which he indicated that the National Prosecuting Authority (NPA) claimed it could not make a decision without the requested affidavit.

5. During June 2011 I was retained as a consultant by the family of Nokuthula Aurelia Simelane to inquire into the whereabouts of Nokuthula Simelane who had been kidnapped from the Carlton Centre, Johannesburg in September 1983 by members of the former Security Branch of the South African Police. My investigation was sponsored by the Foundation for Human Rights (FHR). After her kidnapping she was secretly held captive on a farm in Northam for several weeks and severely tortured after which she disappeared.
6. I researched documents provided to me by the family's legal representatives as well as the contents of public records pertaining to Ms Simelane's disappearance. I thereafter studied the testimonies before the Amnesty Committee of the TRC in respect of the abduction and assault of Ms Simelane. I also acquainted myself with the Truth & Reconciliation Commission (TRC) Report and the TRC findings concerning the Security Branch of the South African Police.
7. In the course of my inquiry I met and spoke to people concerning the disappearance of Ms Simelane. I did not take any written or sworn statements.
8. I spoke to the following relatives of Nokuthula Simelane:
 - Ernestina Simelane - Mother
 - Thembisile Phumelele Nkadimeng - Sister
 - Lungelo Simelane - brother who was also a student at the University of Swaziland at the time of the disappearance.
 - Richard Vilakazi - Uncle



 16/9/2014 TP 

- Thembi Vilakazi – Aunt (Ms Simelane was a frequent visitor to her home in Swaziland and saw her shortly before she left and disappeared in Johannesburg)
- Bonginkosi Nkumalo - Cousin - who was also a Swaziland University student and MK courier in Barney Molekwane's unit and stayed with his Uncle Richard Vilakazi (together with Barney Molekwane and members of the Special Operations MK Unit. Barney was Ms Simelane's cousin).

9. I also met and spoke to the following persons who were in regular contact with Ms Simelane (in Swaziland) prior to her disappearance:

- Wendy Mpama - close personal friend.
- Sipho Twala – MK friend in Swaziland
- Philisiwe Twala – MK member and friend in Swaziland
- Ray Lala – MK member and friend in Swaziland
- Totsi Memela – Personal friend in Swaziland
- Mbali Mngadi – a close friend (roommate at University) now a Brigadier in the South African Police Service.
- Zweli Sizane – Uncle who served in MK Security and Intelligence (Swaziland) at time of disappearance and enjoyed a close relationship with Ms Simelane.
- R.S Moloi – headed MK Security and Intelligence in Swaziland at time of Ms. Simelane's disappearance. He is currently South Africa's Ambassador to Vietnam. He enjoyed a friendly relationship with Ms Simelane.
- Siphiwe Nyanda – currently the President's personal representative in Parliament. He was a MK Commander in Swaziland. His positions included: Commander Transvaal Urban Machinery (1979 - 1983). Chief of Staff Transvaal Command (Eastern Command) (1983 - 1986). Commander Border Operations, Swaziland (1986). Deputy Head, Political Military underground leadership in South Africa (1988 - 1990). He was acquainted with Ms Simelane and her family members in Swaziland.
- Ricky Mkhondo – A senior MK Intelligence officer in Swaziland at the time of Ms Simelane's disappearance. He was friendly with Ms Simelane and Gilbert Twala.



TP
16/9/2014

- Gilbert Twala – now Director General of the Department of Civil Aviation. He was the Commander of the Transvaal Urban Machinery he was Ms Simelane's MK Commander and was also having a romantic relationship with her.

10. They all maintained that Ms Simelane had not returned to Swaziland after her disappearance in South Africa early in September 1983.

11. I spoke to Duma Nkosi and his mother Nthombi Nkosi who both confirm that Ms Simelane arrived at their home in Soweto and spent one night with them. Ms Simelane left the following morning to go to the Carlton Centre. She left a small travel bag of personal belongings at their home. She did not return and was not seen by them again.

12. I spoke to Norman Mkhonza who said he had last seen Ms Simelane on the day of her capture and had not been instructed by any of his superiors thereafter to be on the alert for her, or informed that she was a wanted person (terrorist).

13. I spoke to Nimrod Veyi and Mohapi Selamofela who confirmed that Ms Simelane had very noticeable injuries to her ankles and wrists (as one would expect) from the prolonged and continued shackling that she had endured over five weeks of captivity and said that in their opinion these injuries (apart from other injuries) would have precluded any attempt to re-infiltrate her back into MK Swaziland. They also both said that they were never informed by their superiors that Ms. Simelane was a wanted person (terrorist) and to be alert for her or to gather information regarding her activities or whereabouts. We also discussed safe houses which were used by their SB during 1983 in Klipspruit and Westonaria.

14. I investigated the death of Barney Molekwane because Willem Coetzee said in his testimony before the Amnesty Committee that while Ms Simelane was held captive at the Northam farm, she had provided him with information that led to action been taken against the Sasol MK sabotage group who were led by Barney

TP
16/9/2016

Molekwane. According to Piet Retief Inquest No 79/85 which dealt with the death of Barney Molekwane and members of his Special Operations group in the Eastern Transvaal on 28 November 1985. (Two years after Ms Simelane's capture.) The Molekwane group were on their way back to Swaziland when they encountered members of the Security Forces unexpectedly. A shooting ensued and Barney Molekwane and his fellow operatives were killed. The contact was unexpected and spontaneous. It was not a planned Security Force Operation and cannot be linked to Ms Simelane.

15. Coetzee and Pretorius testified that during Ms Simelane's detention she also provided information which enabled the Security Branch to arrest ANC cadres whilst she was still in confinement at the farm at Northam. They referred to the arrest of Curtis Norman Mkhonza aka MK Mpho. I spoke to Curtis Mkhonza and he told me he was arrested during 1984 and that his arrest was not linked to Ms Simelane.

16. Coetzee and Pretorius also claimed in their testimony before the Amnesty Committee that information from Ms Simelane whilst she was held captive on the farm led "directly or indirectly" to the arrest of 18 persons and referred to an undated news article as follows:

"Police Strike Hard at ANC. Le Grange states 18 identified members of the banned African National Congress, as well as numerous active supporters have been arrested and detained by the Security Branch in the last three months..."

17. It became apparent at the hearing that The Star newspaper published this report on 22 June 1984. It therefore seems that these arrests occurred about 9 months after Ms Simelane's disappearance.

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18. I spoke to some of the 18 persons who were arrested (as referred to in The Star news article dated 22 June 1984). The persons I spoke to were:

- Justice Ngidi
- Jabu Ngubese
- Enoch Mthombeni
- Lillian Gabashane
- Amos Masondo
- Duma Nkosi

19. I spoke to them individually and was told that their arrests in 1984 could not have been as a result of information supplied by Ms Simelane. Amos Masondo explained further that the majority of the 18 arrests related to persons who were not taking an active part in the "armed struggle" but were merely providing shelter and safety to MK Operatives who had been ousted from Swaziland in consequence to the Nkomati Accord, signed on 16 March 1984 between South Africa and Swaziland.

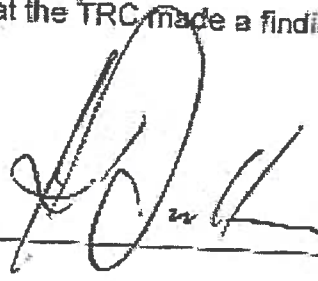
20. I spoke to Manuel Antonio Olifant who told me about a farmhouse at Westonaria which the Soweto SB Intelligence Unit used as a safe house prior to 1983. He also said that in 1983 he lived in house 23 Klipspruit and that the other section of the house, number 21, was used by Coetzee's SB unit as a safe house. He said he did not know what had happened to Ms Simelane.

21. I was told by Ray Lala, Ricky Mkhonda and Tim Williams (all of whom were appointed to senior positions within the South African Intelligence and police intelligence structures after their return from exile in about 1990) that they had not come across any official documentation declaring Ms Simelane a wanted person.



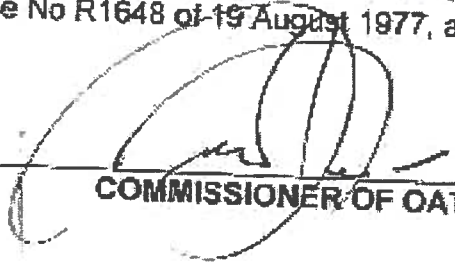
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22. I spoke to Dirk Coetzee who told me that it was a SB strategy to always (wherever feasible) to deflect blame to the ANC. He provided several examples of how this strategy was used. In his opinion deflecting blame to the ANC for Ms Simelane's disappearance was a perfect example of this tactic. In addition to what Coetzee told me I noted too that the TRC made a finding concerning this SB strategy.


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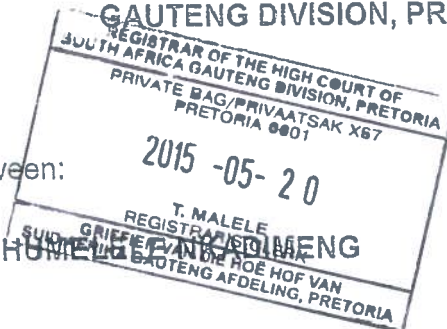
I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at HILLCREST SAPS on this the 16 day of September 2014 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMUNITY SERVICE CENTRAL
2014-09-16
HILLCREST
COMMUNITY SERVICE CENTRAL


 COMMISSIONER OF OATHS

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA



Case Number:

In the matter between:

THEMBISILE PHUMLELE AND OTHERS

Applicant

And

NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS

First Respondent

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE

Second Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

TP

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

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Applicant

And

**NATIONAL DIRECTOR OF
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SOUTH AFRICAN POLICE**

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Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

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ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

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IN CAMERA SUPPORTING AFFIDAVIT

I, the undersigned

VUSUMZI PATRICK PIKOLI

state under oath as follows:

INTRODUCTION

1. I am an advocate of the High Court of South Africa and a former National Director of Public Prosecutions. I have provided a supporting affidavit in these proceedings.
2. I refer to the memorandum mentioned in paragraph 51 of my supporting affidavit titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' and was dated 15 February 2007. This memorandum is annexed hereto marked "VPP1". It was annexed to my affidavit before the Ginwala Commission marked as "TRC1".
3. As I had marked this memorandum as an "*internal secret memorandum*" I have not attached it to my open supporting affidavit. I have attached it this *in camera* affidavit which will be filed separately and which will not be made available to the public, unless this honorable Court authorizes such release.

TP v.p. 20

- 3.1. The issues and complaints raised in the memorandum have already been discussed in my affidavit filed before the Ginwala Commission, which has been part of the public record since 2008.
 - 3.2. In my view, there is nothing in the memorandum that implicates or impairs national security.
 - 3.3. It ought to be released as it points to unlawful and unconstitutional conduct.
4. In this memorandum I pointed out that:
- 4.1. The problems are *"hindering and obstructing the NPA in fulfilling its constitutional mandate, namely, to institute criminal proceedings without fear, favour or prejudice"*.
 - 4.2. The SAPS and NIA had not made dedicated members available to the NPA to gather sufficient and admissible evidence in the TRC cases. This was one of the tasks that the "Task Team" was required to address.
 - 4.3. There were differences in interpretation in relation to the role of the other state departments in relation to the prosecutorial decision-making process.
5. I concluded by stating that:

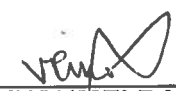
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I have now reached a point where I honestly believe that there is "improper interference with my work and that I am hindered and/ or obstructed from carrying out my functions on this particular matter.

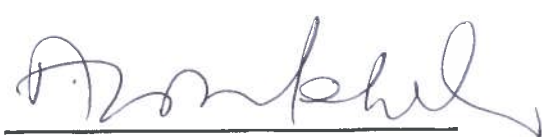
It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took, does not allow that.

Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter.

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VUSUMZI PATRICK PIKOLI

I hereby certify that the deponent has acknowledge that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at CAPE TOWN on this the 6th day of MAY....2011
day of the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

Andrew Lehluyi Bursky Molebale
Commissioner of Oaths
Practising Attorney
2nd Floor, Leadership House, 40 Shortmarket Str
Greenmarket Square, Cape Town, 8001

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The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

SECRET INTERNAL MEMORANDUM	
TO	MS BS MABANDLA, MP MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT
FROM	ADV VP PIKOLI NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
SUBJECT	PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES
REF NO.	3/2P (PCLU)
DATE	15 FEBRUARY 2007

1. PURPOSE OF MEMORANDUM

The purpose of this memorandum is to—

- (a) inform the Minister about the National Prosecuting Authority's (NPA) understanding and interpretation of the policy and guidelines relating to the prosecution of offences emanating from conflicts of the past which were committed on or before 11 May 1994;
- (b) inform the Minister about the problems the NPA is experiencing in the implementation of this policy and guidelines; and

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- (b) propose a way forward.

2. BACKGROUND INFORMATION

2.1 Background relating to initial proposals

- 2.1.1 On 23 February 2004, a Director-General's Forum, under the chairpersonship of the former Director-General: Justice and Constitutional Development (Adv Vusi Pikoli) appointed a Task Team to consider and report on, *"the nature of the 'arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation' that the NPA and intelligence agencies may come up with in assisting persons who divulge information relating to offences committed during the conflicts of the past."*
- 2.1.2 In its deliberations, the Task Team took cognisance of the fact that in terms of section 179(1) and (2) of the Constitution, the NPA is an independent constitutional institution and the National Director has full discretion on whether a particular prosecution should or should not be instituted. The Task Team's recommendations should therefore be consistent with this constitutional requirement.
- 2.1.3 In its Report, the Task Team recommended the establishment of a Departmental Task Team comprising members of the following Departments or institutions:
- The Department of Justice and Constitutional Development
 - The Intelligence Agencies (NIA)
 - The South African National Defence Force
 - The South African Police Service (SAPS)
 - Correctional Services
 - The National Prosecuting Authority
 - Office of the President

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2.1.4 It was proposed that the functions of the proposed Task Team should, among others, be the following:

- "(a) *Before the institution of any criminal proceedings for an offence committed during the conflicts of the past, to consider the advisability of the institution of such criminal proceedings and make recommendations to the National Director of Public Prosecutions in this regard.*
- (b) *To consider applications received from convicted persons alleging that they had been convicted of political offences committed during the conflicts of the past and to make recommendations to—*
 - (i) *the President, through the Minister for Justice and Constitutional Development, to pardon the alleged offender in terms of section 84(1)(k) of the Constitution;*
 - (ii) *the Commissioner of Correctional Services regarding the possible release of the applicant on parole or the conversion of the sentence to correctional supervision."* (Emphasis added)

2.2 Background relating to Amended Prosecution Policy

2.2.1 As the Minister is aware, the abovementioned recommendations were not implemented, since many held the view that the proposed functions of the Task Team could be unconstitutional in view of the provisions of section 179 of the Constitution. Subsequently, Government decided that it was important to deal with these matters on a uniform basis in terms of a specifically defined prosecutorial policy and directives.

2.2.2 Therefore, it was proposed that the National Director, with the concurrence of the Minister, should issue amended Prosecutorial Policy and Directives in terms of section 179(5)(a) of the Constitution, read with section 21 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (NPA Act), and that such

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Policy and Directives should be submitted to Parliament in terms of section 21(2) of the NPA Act.

- 2.2.3 Following discussions with all the relevant stakeholders and a submission to Cabinet, the Prosecution Policy and Directives relating to the prosecution of offences emanating from conflicts of the past which were committed on or before 11 May 1994 (hereinafter referred to as the "Amended Prosecution Policy"), were approved and came into operation on 1 December 2005. The Amended Prosecution Policy was also duly tabled in Parliament and is binding on the prosecuting authority.

3. IMPORTANT FEATURES OF AMENDED PROSECUTION POLICY

- 3.1 For purposes of this memorandum, it is important to refer the Minister to the under-mentioned features of the Amended Prosecution Policy:¹

- (a) The Amended Prosecution Policy emanates from and is based on the statement of President Thabo Mbeki to the National Houses of Parliament and the Nation, on 15 April 2003, when he gave Government's response to the final report of the Truth and Reconciliation Commission (TRC).
- (b) The President, among others, stated that the question as to the prosecution or not of persons, who did not take part in the TRC process, is left in the hands of the National Prosecuting Authority (NPA) as is normal practice.²
- (c) The President further stated that as part of the normal legal processes and in the national interest, the NPA, working with the Intelligence Agencies, will be accessible to those persons who are prepared to unearth the truth of the conflicts of the past and who wish to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in our legislation.³
- (d) It is important to note that the President made it clear that—

¹ Attached hereto as Annexure "A".

² See paragraph A.1(b) of Appendix A to Amended Prosecution Policy.

³ See paragraph A.1(c) and (d) of Appendix A.

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- (i) the decision to be taken by the NPA (whether to prosecute or not) should be in accordance with the normal legal process;
- (ii) in order to reach a well-considered decision, the NPA should work together with the Intelligence Agencies, which include the NIA and the SAPS;
- (iii) the agreements entered into between the NPA and those persons who are prepared to unearth the truth of the conflicts of the past, should be in accordance with standard and normal execution of justice;
- (iv) such agreements should be in accordance with the NPA's prosecution mandate; and
- (v) such agreements should be in accordance with existing legislation.

3.2 Furthermore, it is important to note that the Amended Prosecution Policy expressly states that the prosecuting policy, directives and guidelines are required to reflect and attach due weight to, among others, the following:

- (a) The *dicta* of the Constitutional Court to the effect that the NPA represents the community and is under an international obligation to prosecute crimes of apartheid. (See *The State v Wouter Basson CCT 30/03*).⁴
- (b) The constitutional obligation on the NPA to exercise its functions without fear, favour or prejudice (section 179 of the Constitution).
- (c) The legal obligations placed on the NPA in terms of its enabling legislation, in particular the provisions relating to the formulation of prosecuting criteria and the right of persons affected by decisions of the NPA to make representations, and for them to be dealt with.
- (d) The existing prosecuting policy and general directives or guidelines issued by the National Director to assist prosecutors in arriving at a decision to prosecute or not.

⁴ See paragraph A.2 (h) to (k) of Appendix A.

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3.3 In respect of procedural arrangements, which must be adhered to in the prosecution process, the Amended Prosecution Policy provides, among others, in particular that—

- (a) the Priority Crimes Litigation Unit (PCLU) in the Office of the National Director shall be responsible for overseeing investigations and instituting prosecutions in all such matters;
- (b) the PCLU "shall be assisted in the execution of its duties" by a senior designated official from the following State departments or other components of the NPA:
 - (i) The National Intelligence Agency.
 - (ii) The Detective Division of the South African Police Service.
 - (iii) The Department of Justice & Constitutional Development.
 - (iv) The Directorate of Special Operations.

3.4 From the above, it is clear that in relation to the relevant offences—

- (a) the decision whether to prosecute or not vests in the prosecuting authority and in terms of the Amended Prosecution Policy, in particular, the National Director;
- (b) such decision must be exercised in accordance with the Constitution and existing legislation;
- (c) the abovementioned State Departments only have a role to play insofar as they must assist the NPA in the investigation process and the gathering of information so as to assist the NPA in reaching a well-considered decision whether to prosecute or not.

4. PROBLEMS RELATING TO IMPLEMENTATION OF AMENDED PROSECUTION POLICY

4.1 Since the coming into operation of the Amended Prosecution Policy, the NPA has experienced various problems relating to the implementation thereof. These problems are hindering and obstructing the NPA in fulfilling its constitutional

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mandate, namely, to institute criminal proceedings without fear, favour or prejudice. On the one hand, the NPA is experiencing problems investigating cases to ascertain whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution, since the SAPS and NIA had not made dedicated members available to assist the NPA in this regard. This was subsequently dealt with by the setting up of a "Task Team". On the other, the NPA is now experiencing problems relating to the interpretation of the role of the other State Departments in the process. As indicated hereunder, it seems as if the SAPS and NIA hold the view that the proposals relating to the original proposed Task Team (that were rejected by Government), must be implemented and that such Task Team should play a role in the decision-making process.

- 4.2 During the middle of 2006, a meeting was held at the Office of the Presidency to attend to the abovementioned problems. The National Commissioner, the National Director, the Directors-General of Justice and NIA, and Mr Jafta of the Presidency, attended this meeting. It was agreed that a Working Committee should be established. This recommendation was taken to the Ministers in the Cluster. At a subsequent meeting attended by the Minister for Safety and Security, the Minister of Social Development and Minister Thoko Didiza (as Acting Minister for Justice and Constitutional Development), it was agreed that such Working Committee (now referred to as a Task Team), should be established to assist the NPA.
- 4.3 Following the above agreement, the National Director called a meeting at the Office of the NPA. The Heads of Department as well as representatives of all relevant State Departments to serve on the Task Team were invited. All Departments were represented at this meeting. At this meeting—
- (a) the terms of reference of the Task Team were explained and agreed to;
 - (b) it was agreed that Dr Silas Ramaite (Deputy National Director of Public Prosecutions) would chair the meetings of the Task Team.

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Furthermore, on an issue raised by the representative of NIA, the National Director was explicit in explaining that the mandate of the Task Team would not entail making any recommendations on a decision whether to prosecute or not to prosecute and that the National Director would not be dependent on receiving such a recommendation before he could make a decision. The Task Team should be responsible for overseeing that the NPA obtain the necessary information or to give inputs so as to assist and enable the National Director to reach a well-considered decision whether to institute criminal proceedings or not. Furthermore, the Task Team should deal with all relevant matters identified by the PCLU and the SAPS.

- 4.4.1 Subsequently, on 6 December 2006, the Office of the PCLU received the e-mail marked "B" from Dr PC Jacobs of the SAPS. Furthermore, the National Director received letters from the National Commissioner and the Director-General: NIA, dated 6 February 2007 and 8 February 2007, respectively. (Attached hereto as Annexures "C" and "D", respectively)
- 4.4.2 According to Dr Jacobs, his understanding is that the Task Team must submit a final recommendation to a Committee of Directors-General in respect of each case. He also points out that the National Commissioner is of the view that this procedure should be followed in respect of each investigation that has been finalised. However, he does not elaborate on the role of the Committee of Directors-General.
- 4.4.3 In his letter dated 6 February 2007, the National Commissioner points out that he has been briefed regarding the meeting of the "Task Team set up in terms of the Cabinet guidelines on the outstanding Truth and Reconciliation Commission (TRC) matters". According to the National Commissioner his understanding is that the officials designated on the Task Team "will provide recommendations to the Directors-General who will, as a collective, advise the National Prosecuting Authority as the decision maker of prosecutions". The Director-General: NIA

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indicates that he had a discussion with his representative on the Task Team and he received a copy of the National Commissioner's letter. He concurs with the views of the National Commissioner.

- 4.5 In the first instance, it is important to note that as far as the NPA is concerned, this Task Team was not set up in terms of the Amended Prosecution Policy, which include the guidelines on TRC matters, but in terms of internal agreement between the relevant stakeholders. Furthermore, the NPA is not aware of any agreement or arrangement in terms of which the Task Team must submit a report to a Committee of Directors-General and which Committee must advise the NPA regarding prosecution decisions. Reading the e-mail of Dr Jacobs and the letter of the National Commissioner in context, it seems as if the above process is a proposal by the National Commissioner and not an agreement reached by the Task Team. For example, Dr Jacobs points out that—

- the National Commissioner is of the opinion that it must be established what disclosures were made...";
- "the National Commissioner is of the opinion that such process need to be followed in each case...".

In the same vein, the National Commissioner writes as follows:

- "I have insisted that the complainant be consulted ...on the basis that the Directors-General will have a opportunity to provide input before a decision on prosecution is taken."
- "In my view a comprehensive report...should be discussed by the Directors-General".

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- "Although I do not insist on a meeting of the Directors-General after each meeting of our officials, I deem it necessary that the substantive reports and recommendations of the officials should be discussed by the Directors-General before a decision is made." (Emphasis added)

4.6 The NPA cannot agree to the above proposal. The effect thereof might be that the National Director would be obliged (as is suggested by the National Commissioner) to wait for the finalisation of the proposed process before he may make a decision whether to prosecute or not. If the Task Team or the Committee of Directors-General, in spite of a "reasonable prospect of a successful prosecution", unnecessarily delays the process, the National Director would be prevented from complying with the prosecuting authority's constitutional obligation. Therefore, such a process would be unconstitutional.

5. CONCLUSION AND WAY FORWARD

5.1 There is clearly a misunderstanding regarding the role of the Task Team and the role of the relevant State Departments referred to in the Amended Prosecution Policy. In accordance with the approved Amended Prosecution Policy⁵, the NPA is of the view that the duty of the Task Team or the relevant State Departments is to assist the NPA "in the execution of its duties". However, nothing prevents such a Task Team or Departments (whether individually or collectively) to make recommendations to the National Director, provided that the National Director should never be in a position where his constitutional duty is dependent on the recommendation of such a Task Team or relevant Department. Such a procedure would be unconstitutional.

⁵ See paragraph B.6 of Appendix A.

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- 5.2 I have now reached a point where I honestly believe that there is improper interference with my work and that I am hindered and/or obstructed from carrying out my functions on this particular matter. Legally I have reached a dead end.
- 5.3 It would appear that there is a general expectation on the part of the Department of Justice and Constitutional Development, SAPS and NIA that there will be no prosecutions and that I must play along. My conscience and oath of office that I took, does not allow that.
- 5.4 Based on the above, I cannot proceed further with these TRC matters in accordance with the "normal legal processes" and "prosecuting mandate" of the NPA, as originally envisaged by Government. Therefore, and in view of the fact that the NPA prosecutes on behalf of the State, I am awaiting Government's direction on this matter.

 16.02.2007

Adv VP Pikoli
National Director of
Public Prosecutions

Ms BS Mabandla, MP
Minister for Justice and
Constitutional Development

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