
MINISTERIAL MEMORANDUM

**TO: T.M. MASUTHA, MP (ADV)
MINISTER: JUSTICE & CORRECTIONAL SERVICES**

**FROM: ADV. S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

**SUBJECT: MEMORANDUM TO THE MINISTER IN TERMS OF
SECTION 33(2)(a) OF THE NPA ACT, NO 32 OF 1998, AS
AMENDED**

**REPORT ON INVESTIGATIONS AND PROSECUTIONS
EMANATING FROM THE TRUTH & RECONCILIATION
COMMISSION (TRC)**


DATE: 15 JULY 2015

REF: 3/3/1/Ministerial Memoranda – PCLU/TRC(1/2015)

1. PURPOSE

The purpose of this memorandum is to provide the Honourable Minister with a comprehensive report on the investigations and prosecutions of matters emanating from the Truth and Reconciliation Commission (TRC).

**2. BACKGROUND (PRIOR TO THE INVOLVEMENT OF THE PRIORITY
CRIMES LITIGATION UNIT (PCLU))**

- 2.1 The mandate of the TRC was to investigate politically motivated human rights' abuses committed during the period 1 March 1960 to 5 May 1994.
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- 2.2 During that period South Africa comprised of an Apartheid State and several self-governing territories, each with its own police force and prosecuting authority, acting independently of each other. In many cases, little or no sincere investigations were conducted into State orchestrated violence directed against the Liberation Movements. Prior to the April 1994 elections, the Apartheid State's Security Forces deliberately destroyed substantial documentation in order to conceal the involvement of State structures in human rights' abuses.
- 2.3 In 1990, the Harms Commission found that there was no basis for the allegations that the Security Forces were operating covert assassination squads. In either 1992 or 1993, the Goldstone Commission was established, which continued probing the existence of these squads. Limited information was received about certain State structures which were in fact involved in covert assassinations. The Commission had no law enforcement powers and was dissolved.
- 2.4 Although a single national police force was established shortly after the 1994 elections, the investigation of TRC cases was dealt with on a fragmented basis. Although the D'Oliveira Unit (a SAPS structure reporting to the then Attorney General: Transvaal) was established to take forward the work of the Goldstone Commission, its mandate limited it only to a small number of cases involving the Apartheid State's security structures. The prosecution of cases remained at the discretion of the Attorneys General which had been in existence prior to the elections.
- 2.5 In 1990, an Indemnity Act came into effect, granting indemnity for certain categories of politically motivated offences. The

scope of the indemnities granted was significantly extended by the Further Indemnities Act of 1992. In 1995, President Mandela issued a blanket indemnity for all contraventions of the Firearms - and Explosives Acts committed before 3 December 1993. The TRC recognised all indemnities granted under the previous legislation.

2.6 The TRC commenced its work in 1996. The TRC Act specifically made provision for investigations and prosecutions to be put on hold pending the hearing of amnesty applications. SAPS decided to suspend investigations in all cases where it was believed that amnesty applications would be lodged. This was to save resources being wasted if in fact amnesty was granted.

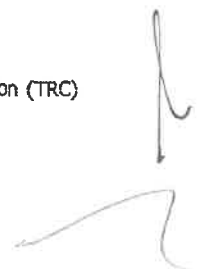
2.7 The TRC in the main had three sources of evidence:

2.7.1 Complaints by victims and hearings conducted by the Human Rights' Violations Committee.


2.7.2 The questioning of persons suspected of having committed human rights' abuses. The TRC Act specifically rendered such interrogations inadmissible in criminal proceedings.

2.7.3 Applications for amnesty from persons involved in human rights' abuses. The TRC Act specifically excluded the amnesty applications and subsequent oral testimony from being used in criminal proceedings.

2.8 In September 1998, the NPA Act came into effect and the country's first NDPP was appointed.



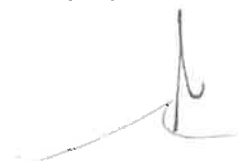
- 2.9 In October 1998, the TRC tabled its "*Final Report*" in which it recommended that consideration be given to prosecutions in cases where amnesty had either been refused or not applied for and where admissible evidence [my emphasis] was available. The TRC conceded that much of its evidence would be inadmissible.
- 2.10 The NDPP immediately established a Human Rights' Component in his office to address this recommendation of the TRC. Informal meetings took place between members of this unit and members of the TRC. However no evidence was handed over identifying cases for prosecution. The amnesty process had not been concluded and in fact the final amnesty judgments were only delivered in 2002. For obvious reasons decisions whether or not to prosecute could not be taken before it had been established whether persons had received amnesty or not.
- 2.11 The Human Rights Division dissolved in 2000. For a very brief period the DSO was tasked with TRC matters, but since that organisation had itself only just been created, little or no work was in fact done on TRC cases. The D'Oliveira Unit had also dissolved in the same period.
- 2.12 The Directors of Public Prosecution (DPPs) had taken over the functions of the Attorneys General. They continued to deal with matters with which their offices were previously seized. Prosecutions were instituted in cases where amnesty had been refused (e.g. the Bisho massacre). In addition, the DPP: North Gauteng declined to prosecute Security Branch General Engelbrecht in respect of a number of cases where he had been



implicated by convicted Vlakplaas Commander de Kock. The then NDPP concurred with this decision.

3. MANAGEMENT BY THE PCLU

- 3.1 In 2003, the PCLU was established as a special directorate in the office of the NDPP to manage and direct investigations and prosecutions in relation to certain specified offences. The NDPP however had the power to refer additional cases to the PCLU.
- 3.2 Also in 2003, the amnesty process was concluded and consequently the President informed Parliament that prosecutions arising from the TRC process would be dealt with according to the ordinary prosecution principles.
- 3.3 The NDPP directed that the PCLU should be responsible for managing the outstanding TRC cases in respect of which decisions whether or not to prosecute were required. The NDPP had however to confirm all decisions taken. The PCLU was not an investigative unit and was not tasked to evaluate every complaint laid with the TRC and each and every finding made by the various committees thereof.
- 3.4 The PCLU took the following steps to identify such outstanding cases:
- 3.4.1 The Divisional Head of the Detective Service of SAPS was requested to issue an order to all the Provincial Commissioners to report outstanding cases to the PCLU.



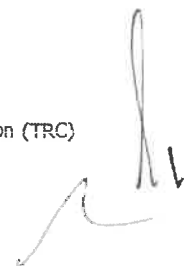
- 3.4.2 A similar request was made to all the DPPs.
- 3.4.3 Former members of the D'Oliveira Unit and the Human Rights' Component were interviewed.
- 3.4.4 Two former TRC researchers were employed on contract to work through the TRC data / material located in the State Archives for suitable cases.
- 3.5 In a small number of instances victims contacted the PCLU requesting that their cases be looked into. These requests were accepted even if the criteria specified by the TRC were not meant to enable the victims to obtain closure.
- 3.6 A major challenge was locating the material necessary to make decisions:
- 3.6.1 The Director General: DoJ&CD had after the closure of the TRC issued a directive that all inquests older than 10 years may be destroyed.
- 3.6.2 Police dockets could not be located either because they had not been returned by the TRC or had been lost during the integration process of the former police forces or due to the closure of police units.
- 3.6.3 Difficulties were encountered with the location of court records.
- 3.7 The audit process however identified 400 cases which were in the main disposed of on the following basis:

- 3.7.1 Amnesty granted
- 3.7.2 Crimes prescribed: In terms of s18 of the Criminal Procedure Act, No 51 of 1977, crimes such as assault (dealt with as torture by the TRC) culpable homicide, attempted murder, accessory after the fact and defeating the ends of justice prescribe after 20 years. As at July 2015, all such cases falling within the TRC timeframe have prescribed.
- 3.7.3 Persons having been refused amnesty or not having applied having been granted indemnity in terms of s204 of Act 51 of 1977. In addition, in certain circumstances where s204 did not apply, the Competent Prosecuting Authorities at the time declined to prosecute the persons in return for them having supplied useful information for the purpose of investigations.
- 3.7.4 Matters already finalised by the DPPs or Attorneys General.
- 3.7.5 No satisfactory evidence upon which a successful prosecution could be instituted.
- 3.7.6 Insufficient evidence available upon which to assess whether a prosecution could be instituted or not, e.g. previous court records and police dockets not available.
- 3.7.7 Witnesses and/or suspects deceased.

- 3.7.8 Matters falling outside the jurisdiction of the South African Courts, e.g. the murder of Dulcie September in Paris.
- 3.7.9 Persons having been granted indemnity under the two Indemnity Acts.
- 3.8 Prosecutions were however instituted in the following cases:
- 3.8.1 *S v Terre'Blanche*: The leader of the AWB entered into a plea and sentence agreement resulting in a wholly suspended sentence being imposed relating to a series of bombings in the North West Province.
- 3.8.2 *S v Blani*: The accused, a member of the UDF, entered into a plea and sentence agreement resulting in a partially suspended prison sentence for an attack on an elderly couple living on a farm in the Eastern Cape.
- 3.8.3 *S v Nieuwoudt & 2 Others*: The accused, three former Security Branch members, were charged with the murder, kidnapping and assault of three Port Elizabeth activists (the PEBCO 3 incident). Although the accused were indicted in the Port Elizabeth High Court, the case was on an ongoing basis postponed and withdrawn due to lack of evidence after a period of five years.
- 3.9 Approximately 350 of the 400 cases were finalised on the above basis. In respect of the remaining 50, further investigations were

necessary before decisions whether or not to prosecute could be taken.

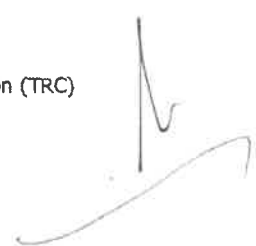
- 3.10 Both the DSO and SAPS were requested to investigate the remaining 50 cases, but declined to do so. The reasons for SAPS not investigating are set out in the letter of 26 September 2003 by the Divisional Commissioner, attached hereto as **Annexure "A"**. The contents of the letter are self-explanatory and in fact the then NDPP elected not to approach the President as indicated by SAPS.
- 3.11 The ANDPP (Dr Ramaite SC) put the management of TRC cases on hold pending the formulation of special guidelines in terms of s179 of the Constitution. This was done shortly after a decision was taken to charge three further Security Branch members. Shortly thereafter the NPA was provided with a copy of an Indemnity Bill, which had been drafted by DoJ&CD. (An extract of the Bill is attached as **Annexure "B"**.) The constitutionality of the Bill was obviously questionable and in fact it was never enacted.
- 3.12 The formulation of the guidelines took a considerable amount of time. Once they entered into law, they placed the decision on making decisions whether or not to prosecute on the NDPP. The PCLU was required to assist the NDPP in making decisions and formed part of a multi-disciplinary task team made up of SAPS, NIA, DoJ&CD and the DSO (the TRC Task Team). The guidelines made provision for the NDPP to grant indemnity to accused if they satisfied the criteria which were applied by the TRC's Amnesty Committee.



- 3.13 The Task Team first conducted a review of the matters previously dealt with before giving attention to matters requiring investigation.
- 3.14 A plea and sentence agreement was entered into with the former Minister of Police (Vlok), former National Police Commissioner (Van der Merwe) and three former members of the Security Branch relating to the attempted murder of Rev Frank Chikane. The accused all received wholly suspended sentences.
- 3.15 The plea and sentence agreement was widely criticised by civic society and in fact Rev Chikane laid a complaint against the Head of the PCLU with the Minister.
- 3.16 The NDPP (Adv Pikoli) was suspended and the Ginwala Commission was appointed to enquire into the complaints made against him. Rev Chikane lodged a complaint relating to the Vlok/Van der Merwe matter with the Commission.
- 3.17 SAPS notified the ANDPP (Adv Mpshe SC) that it would not continue to investigate TRC cases pending the outcome of the Ginwala Commission.
- 3.18 A group of victims brought an action in the High Court to have the TRC guidelines set aside on the basis that they had introduced a second amnesty process and hence unconstitutional. This application was successful and further delayed the investigation of TRC cases because the then Minister (Mabandla) and NDPP (Mpshe SC) first attempted to take the judgment on appeal, but abandoned such course of action upon legal advice.

- 3.19 By that stage the number of outstanding cases requiring investigation had been reduced to 8. The remaining 40 had been finalised as not justifying the institution of prosecutions.
- 3.20 After the findings of the Ginwala Commission had been handed down, the PCLU commenced negotiating with SAPS for the investigation of the remaining 8 cases. In addition, the PCLU was requested to also attend to the Viyane, Guguletu Seven, Lolo Sono & Shabalala, Japie Maponya and Neil Aggett matters.
- 3.21 Initially the investigation of TRC cases fell within the mandate of the Detective Service and a series of negotiations took place with the Divisional Head. Shortly before a project team was due to be appointed, the responsibility for TRC matters was transferred to the DPCI (the Hawks). The DPCI indicated that the cases would be investigated by a component of its head office, but that such investigations could only commence once the 2010 World Cup had been held due to the fact that its members were committed to security duties.
- 3.22 The Anton Lubowski murder in Windhoek, Namibia was investigated. A decision was taken not to prosecute in respect of an alleged conspiracy, formulated in South Africa by members of a covert military structure on the basis that there was no acceptable evidence to prove the existence of the conspiracy or to identify the conspirators. The murder itself could not be enquired into because it was committed outside the jurisdiction of the South African Courts. The decision not to prosecute was confirmed by Adv Mpshe SC and the Minister was informed accordingly.

4. CASES ON HAND



4.1 ***The Cradock 4 incident***

This matter relates to the kidnapping and murder of Mr Goniwe and three other Eastern Cape activists in Port Elizabeth in 1985. The DPCI investigated two former members of the Port Elizabeth Security Branch as well as a General in Crime Intelligence in relation to their alleged involvement in the crimes. The first suspect died before the investigation against him could be concluded. In respect of the other two suspects, both the PCLU and the DPP: Eastern Cape were of the view that there was no basis upon which a prosecution could be instituted against either of them. The NDPP must however confirm the decision not to prosecute.

4.2 ***Pebco 3 incident***

This matter relates to the kidnapping, torture and murder of Mr Hashe and two other members of the Pebco Civic Organisation in 1985 in the Eastern Cape. Although the charges had been withdrawn, the matter nevertheless required further investigation because numerous issues had not been canvassed when the initial decision to institute a prosecution had been taken. The DPCI has still to finalise all the outstanding investigations. Although it is unlikely that a prosecution will be instituted, an inquest will have to be held.

4.3 ***Disappearance of Nokuthula Simelane***

This matter relates to the disappearance of an MK operative in 1983 from the Carlton Centre, Johannesburg. A group of Security Branch members were granted amnesty for her kidnapping, but no evidence was forthcoming relating to her ultimate fate. On the version of certain of the amnesty applicants, the suggestion was that she was in all probability murdered by the other applicants. These applicants however deny those allegations and suggest that she agreed to be an informer and was reinfilitrated into the MK structures in Swaziland. The suggestion is that she was murdered by the ANC. Her remains have never been discovered. An application was brought by the victim's family to compel a decision. The NPA has however decided not to prosecute at this stage and the process is in motion to hold a formal inquest before a Judge of the High Court.

4.4 ***The Highgate Hotel incident***

This matter relates to an attack on a hotel in East London in 1993. A number of people were killed and seriously injured. No persons were ever prosecuted or applied for amnesty. Some years after the closure of the TRC the former investigator and the current leader of the PAC alleged that the attack was carried out by unidentified members of the Security Forces. These allegations are under investigation. Although it would appear unlikely that the perpetrators would be identified, nevertheless an inquest will have to be held. The DPCI must still finalise all the outstanding investigations.

4.5 **Murder of *Viyane***

This matter relates to the fatal shooting of a civilian by the police in Northern KwaZulu-Natal in 1993. Although the case was not dealt with by the TRC, the family have requested an investigation because it is alleged that the deceased was killed because of his allegiance to the ANC. The allegations have been investigated and it has been established that the case was not politically motivated. The case was referred to the DPP: KZN to consider reopening the inquest in the light of an additional statement obtained from one of the police officers involved in the shooting. She however has declined to reopen the inquest on the basis that the new statement is untrue and would not result in a different finding were an inquest to be held.

4.6 **Attempted murder of *Rev Frank Chikane***

During the course of the plea and sentence agreement set out above, the accused in that matter implicated former Security Branch General Basie Smit. The DPCI was requested to investigate his involvement. The DPCI conducted a very weak and unsatisfactory investigation, claiming that Rev Chikane could not be traced. Before the matter could be taken further, the crime prescribed, thereby preventing any further probe into the alleged involvement of General Smit.

4.7 **Heidelberg Tavern Massacre**

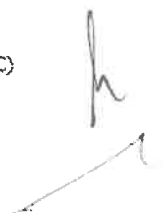
A number of APLA operatives were convicted of having carried out the above attack which resulted in a number of people being murdered and seriously injured. The operatives all received amnesty. However, after the closure of the TRC, a former Head of the PAC made a number of radio interviews in which he claimed responsibility for the attack. The father of one of the deceased has requested that the matter be investigated. Investigations are in progress.

4.8 ***St James Church Massacre***

A number of APLA operatives were convicted of having carried out the above attack which resulted in a number of people being murdered and seriously injured. The operatives all received amnesty. However, after the closure of the TRC, the former Head of the PAC made a number of radio interviews in which he claimed responsibility for the attack. A parliamentarian was approached by a number of survivors of the attack and she has requested that the matter be investigated. Investigations are in progress.

4.9 ***Arms Cache: Philip Powell***

In April 1994, Mr. Powell, an IFP senator was linked to arms found in a KwaZulu police camp in Northern KwaZulu-Natal. The then Attorney General of Natal declined to prosecute him. Mr Powell was thereafter implicated as having received a huge consignment of arms in October 1993. A prosecution could not be instituted on that charge because a Presidential Proclamation of 1996 gave blanket amnesty for all firearms offences committed on or before December 1993. In 1998, Mr Powell pointed out a bunker containing arms at Nqutu. The



DPP: KZN declined to prosecute. The NDPP however requested that the matter be fully investigated. This investigation established that not all the arms had been recovered and that Mr Powell's version regarding the April 1994 cache was untrue. The official who made the decision not to prosecute indicated that in the light of the new evidence, he would have favoured a prosecution. The NDPP therefore gave Mr Powell notice of his intention to set aside his decision not to prosecute relating to the April 1994 case. Mr Powell emigrated to the United Kingdom and a warrant for his arrest was issued. The issue of extradition was taken up with the UK authorities but it emerged that the offence would be classified as political by the UK and therefore extradition was not applied for. Representations were received from Mr Powell seeking the cancellation of the warrant. The matter was investigated further in order to establish whether the evidence on which the warrant was obtained, was still available. The DPCI indicated that it was difficult to confirm the availability of the evidence and the offence prescribed in April 2014.

4.10 **Murder of Sono and Shabalala**

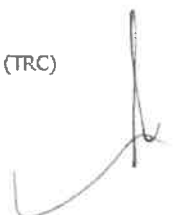
This matter relates to the activities of the Mandela United Football Club. The two persons disappeared having last been seen in the company of members of this club. Investigations by both SAPS and the TRC failed to locate either the remains of the two persons or any evidence relating to their deaths. In 2013 however, the Missing Persons' Task Team located two mortuary records containing photographs which were positively identified by the families as being the two persons. Medical evidence suggested that they had been brutally murdered. Their remains have now been exhumed and are undergoing DNA and forensic



testing. The TRC and SAPS investigations are being revisited in order to establish whether the perpetrators of the two murders can be identified and a successful prosecution instituted. In the event of no such evidence being forthcoming, the Magistrate: Johannesburg will be requested to reopen the original inquests in order to receive the new evidence relating to the identities of the deceased and their causes of death. The Head of the PCLU had earlier declined to prosecute, because of unsatisfactory evidence.

4.11 *Guguletu Seven*

This matter relates to the fatal shooting of seven MK operatives by the police in Cape Town in March 1986. A member of the public has requested the Minister to confirm whether the case is under investigation. This matter was not one of the cases identified for investigation because an inquest found that no one was responsible for the deaths of the deceased and amnesty was granted to two members of the Security Branch involved in the incident. The TRC material has however been re-evaluated and the conclusion reached that the initiation of an investigation would not lead to a successful prosecution. The TRC granted amnesty to the senior member of the Security Branch on the basis that the deceased had initiated the shooting by throwing a hand grenade and that the member had attempted to arrest them. The TRC further found that neither the Murder & Robbery nor the Riot Units' senior officials had given any instructions that the deceased should be killed. Although a junior member of the Security Branch had testified that a sergeant in the Riot Unit had shot one of the deceased after he had surrendered, he was adamant that he was not able to identify this person. In addition, he admitted that he had not mentioned this incident in previous



statements. An askari who had originally alleged that the deceased had been murdered and that false evidence had been placed before the inquest was found to be an unsatisfactory witness by the Amnesty Committee.

4.12 *Dr Neil Aggett*

The above person was an activist, who committed suicide in detention in 1982. An inquest found that the police were not responsible for his death. No one applied for amnesty for his death. The TRC's Human Rights' Committee however found that the police were responsible for his death on the basis of the circumstances under which he was detained. In 2012, the Mail & Guardian alleged that one of the persons responsible for Dr Aggett's interrogation now held a number of contracts with Government. This led to the matter being raised by the Justice Portfolio Committee. Any charge of assault or culpable homicide has prescribed in 2002. The matter is being investigated solely on the basis of whether the persons involved in his detention foresaw that he would commit suicide and persisted with their actions reckless as to whether suicide resulted. This could be the basis for a charge of murder. There is however no evidence to suggest that his interrogators killed him.

4.13 *Japie Maponya*

This is one of the matters in respect of which De Kock was convicted and refused amnesty. The remains of the deceased were never recovered. As a result of the Missing Persons' Task Team, it was in 2014 established that one of the persons involved in the offence had not applied for amnesty and



consequently the possibility of being able to prosecute him his involvement in the case is being considered.

5. COMMENTS

5.1 It is a fact that there are very few cases arising from the TRC process which warrant investigations and decisions to prosecute. As appears from the breakdown of the cases above, it would appear unlikely that successful prosecutions could be instituted in many of the cases.

5.2 Unfortunately a perception has been created with the media and the public by former members of the TRC that the TRC supplied the NPA with volumes of evidence justifying numerous prosecutions. This is unfortunately not the position and to date the record has not been publicly set straight.

5.3 The correct position is as follows:

5.3.1 The TRC did not supply the NPA with volumes of evidence. It has been established that all that transpired was that the TRC supplied lists of amnesty applicants' names to the component in the NDPP's office referred to above. This component had to in turn request the DPP: Cape Town to retrieve the amnesty judgments from the TRC.

5.3.2 Prior to the TRC a number of prosecutions were in fact instituted. These include the prosecution of former Vlakplaas Commander de Kock, Military Doctor Wouter Basson, CCB operative Ferdi Barnard, Magnus Malan (the former Minister of Defence) and a



large number of Defence Generals, as well as a number of key prosecutions linked to the political violence in KwaZulu-Natal. Where convictions were obtained, it would be irrelevant that subsequently amnesty was refused (as was the case with the De Kock and Barnard matters). Where acquittals resulted (as in the case of Basson and Malan), there would be no incentive to apply for amnesty and no opportunity for further persons to be implicated. It is a matter of fact that many of the amnesty applications related to persons who had already been convicted.

- 5.3.3 The granting of amnesty in a number of significant cases which commanded high public interest. Such matters include the murder of Griffiths Mxenge, the poisoning and murder of Simphiwe Mtimkulu, the kidnapping and murder of the Mamelodi 10, the majority of the killings committed by Vlakplaas and other Security Branch structures, etc.
- 5.3.4 The granting of amnesty to certain perpetrators making the prosecution of other persons difficult, e.g. the *Guguletu Seven* matter referred to above and the granting of amnesty to the Head of the Eastern Cape Security Branch, who ordered the murders in the *Pebco 3* matter.
- 5.3.5 The impact of prescription, e.g. the death and detention of Steve Biko and all the other cases relating to torture and culpable homicide.



- 5.3.6 The absence of credible investigations at the time when the crimes were committed and the destruction and loss of documentation.
- 5.3.7 The age of the cases. Many of the witnesses and suspects were deceased before decisions could be taken to institute prosecutions.
- 5.3.8 Many of the cases are dependent on perpetrators being prepared to testify against their co-conspirators. Unfortunately a number of accomplices have been discredited in previous proceedings to such an extent that no reliance can be placed on their credibility.
- 5.3.9 The acquittals in the high profile *Magnus Malan*, *Wouter Basson* and *Bisho massacre* cases do not serve as an incentive for perpetrators to come forward.

6. **MATTERS OF CURRENT CONCERN**

- 6.1 There are therefore currently only eight cases in respect of which final decisions whether to prosecute or not must be taken. (In respect of the Nokuthula Simelane matter, the decision not to prosecute will be considered after the holding of an inquest.) Although the finalisation of these cases is a priority for the NPA, it is dependent on the DPCI to conclude the investigations.
- 6.2 Unfortunately the quality of investigations is very poor and is having a negative impact on being able to finalise the cases quickly.

- 6.2.1 In the Rev Chikane matter, no investigations were conducted, despite a lengthy directive being issued by the prosecutor and in fact, it was even suggested that Rev Chikane could not be traced.
- 6.2.2 In the Heidelberg Tavern and St James Church cases, the DPCI claimed that the police dockets and court records could not be located although it has now been established that for many years the relevant material was in fact in the possession of the DPCI.
- 6.3 The failure for the matters to be investigated from 2003 until 2011 has prevented prosecutions being instituted in cases that could possibly have resulted in convictions. This is because by the time the cases were eventually investigated, the suspects and/or witnesses were already deceased. (The Cradock 4 and Pebco 3 cases are examples thereof.)
- 6.4 The consequences of the failure to investigate will be placed in the public domain once inquests are held in certain matters or when the decisions not to prosecute are announced that interested parties request access to the material in terms of PAIA.
- 6.5 A particular case in point is the Nokuthula Simelane matter where a formal inquest before a Judge will be held. It is a fact that evidence will be led of key witnesses being dead and key evidence being unable to be located. It is only to be expected that the Judge would require an explanation as to why this matter was not investigated prior to 2011. In this regard, I attach as **Annexure "C"**, a copy of the affidavit of former NDPP, Adv Vusi Pikoli, and as **Annexure "D"**, a copy of the affidavit of the then



Head: PCLU, Adv Anton Ackermann

Both advocates alleged high level political interference aimed at preventing the investigation of TRC cases in their affidavits. These affidavits were filed as part of the application to compel a decision and it is not inconceivable that the victim may call these advocates as witnesses if this issue is in fact raised.

- 6.6 It is only to be expected that once the decisions are publicly announced and the failure to investigate exposed, that allegations will be made that Government deliberately waited for all the witnesses and accused to die before giving attention to the cases.

7. CONCLUSION

It is recommended that the Honourable Minister note the contents of this memo. I will inform the Minister of the outcome of the individual cases once the investigations have been concluded and decisions made on them.

ADV. S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE:

NOTED

MS. N. SINDANE
DIRECTOR GENERAL FOR JUSTICE & CONSTITUTIONAL DEVELOPMENT
DATE:

NOTED

MR. J. JEFFERY, MP
DEPUTY MINISTER FOR JUSTICE & CONSTITUTIONAL DEVELOPMENT
DATE:

NOTED

T.M. MASUTHA, MP (ADV)
MINISTER FOR JUSTICE & CORRECTIONAL SERVICES
DATE: