

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

HELD AT:

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

BEFORE:

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

SWORN STATEMENT

I, the undersigned,

MXOLISI SANDILE OLIVER NXASANA

do hereby state under oath as follows:

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

INTRODUCTION

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

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

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

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

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

11 My tenure as the NDPP was very brief and marred by controversy and traumatic events. This trauma persists to this very day. My participation in this process evokes these painful memories.

12 I depose to this statement, notwithstanding my trauma, out of national duty and a commitment to assist the Commission in the discharge of its mandate as outlined in the Terms of Reference.

13 My affidavit adopts the following scheme:

13.1 section 1 sets out a brief history of my academic credentials, professional experience, my appointment as the NDPP and the controversy which marred my tenor as NDPP; and

13.2 section 2 outlines how the political infighting within the NPA affected my focus on the TRC Cases.

ACADEMIC BACKGROUND, PROFESSIONAL EXPERIENCE AND APPOINTMENT AS NDPP

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

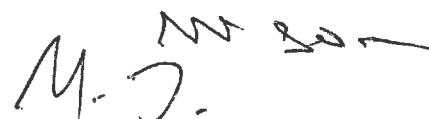
M. J.

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

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THE TRC CASES AND THE INGIGHTING WITHIN THE NPA

- 18 Insofar as the handling of the TRC Cases by the NPA during my tenure is concerned, I did not deal with any TRC Cases during my tenure, nor did I receive any report on the TRC Cases. I also did not request any report.
- 19 When I was appointed as the NDPP, Advocate Shaun Abrahams was the Head of the PCLU and Advocate Chris Macadam was reporting to him. This caused a lot of tension between Advocate Abrahams and Advocate Macadam. Advocate Macadam had a lot of experience within the NPA and felt aggrieved to be reporting to somebody junior to him. Advocate Abrahams was a junior to Advocate Chris Macadam by far.
- 20 I have read Advocate Macadam's affidavit where he states that I removed him from the TRC Cases and assigned him to matters concerning the Organisation for Economic Cooperation and Development (the **OECD**). This is indeed correct. Chris was the Deputy Director within the PCLU and was knowledgeable and well-versed with issues pertaining to the OECD where there were greater risks.
- 21 In an effort to ensure that there was rotation within the NPA to widen the experience of the NPA Management. I should point out that the National Prosecutions Service was the main operating business unit in the NPA. I was concerned that Advocate Jiba as head of the National Prosecution Service was abusing this powerful position, using it as the platform to influence the Deputy Directors of Public Prosecutions and prosecutors in other regions to disobey and undermine my instructions.



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

CONCLUSION

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

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MXOLISI SANDILE OLIVER

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DEPONENT

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



COMMISSIONER OF OATHS

Full Names and Surname:

Official Capacity:

Address:

Date:

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



Mr Mxolisi Nxasana

mx67nxasana@gmail.com

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15 October 2025

Dear Mr Nxasana

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

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

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



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

Yours faithfully

Advocate I Semanya SC

CHIEF EVIDENCE LEADER



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

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

TO: MR MXOLISI OLIVER SANDILE NXASANA

ADDRESS: 137 GARDEN ROAD, SUMMERSET ESTATE, MIDRAND

TEL: 082 825 6678

EMAIL: MXO76NXASANA@GMAIL.COM

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

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

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

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

Regulation 8(2) reads:

"8(1) ...

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

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

"11(1) ...

(2) ...

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

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

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

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

"12(1) ...

(2) *Any person who*

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

DATED AT JOHANNESBURG ON THIS DAY OF JUNE 2026.

JUSTICE SISI KHAMPEPE

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

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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 9496 • Johannesburg 2000 • South Africa • Tel: (011) 836 9831 • Fax: (011) 834 4273

Your Ref:

Our Ref: Our Ref: B Sibya

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

By fax: 012 845 7291

16 January 2014

Dear Mr. Nxasana

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

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

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 Mohamed, AJ Richard
S Sephton (Director), C McConnachie
N Fakir (Director), T Mhense, C van der Linde
T Ngwenkwe (Head of CLU), M Bishop, G Bizos SC, J Brickhill, S Nindi, B Sibya, W Wilcomb

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

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

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

Investigation report

11. The investigation report raises more questions than answers.

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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

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

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

Westonaria plot

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

Mortuary Records

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

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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

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

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

October to December report

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

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

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

Yours sincerely


Legal Resources Centre, Constitutional Litigation Unit, Johannesburg
Bongumusa Sibiyi

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

And to: Advocate S K Abrahams
Acting Head: Priority Crimes Litigation Unit
Office of the National Director of Public Prosecutions
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The Acting National Director of Public Prosecutions
National Prosecuting Authority
Private Bag 3762
Pretoria
0001

By fax: 012 845 7291

16 January 2014

Dear Mr. Mrazana

**KIDNAPPING, TORTURE, DISAPPEARANCE AND MURDER OF NONYHULA
AURELIA ANIELANE (PRIORITY INVESTIGATION BY PLEHN JARUZHIM)**

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

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M. J. MBO