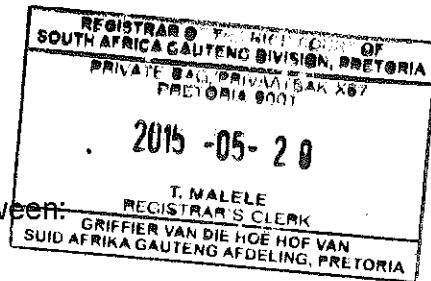


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



Case Number: 35554/2015

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

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT on a date and at a time to be arranged with the Registrar, the applicants intend to apply to this Honourable Court for an order in the following terms:

1. The rules relating to forms and service are dispensed with and the application is heard in terms of shortened time periods.
2. Compelling the first and third respondents to take the necessary steps, within 30 days of the granting of this order, to refer the kidnapping, torture, disappearance and murder of NOKUTHULA AURELIA SIMELANE ("the deceased") (Priority Investigation: JV Plein: 1469/02/1996) in 1983 to a formal inquest before the High Court in terms of sections 5 and 6 of the Inquests Act 58 of 1959 in the interests of the proper administration of justice and in order to prevent a failure of justice.
3. Declaring that:

- 3.1 the prolonged delay by the first and second respondents in investigating the kidnapping, torture, disappearance and murder of the deceased in 1983;
- 3.2 the ongoing failure or refusal of the first respondent to take a decision whether to prosecute or not to prosecute the known suspects (a prosecutorial decision); or,
- 3.3 the ongoing failure or refusal of the first respondent to refer the abovenamed case to a formal judicial inquest.

is a gross violation of my rights to human dignity and equality; and is inconsistent with the rights to life, freedom and security of the person, the rule of law and South Africa's international law obligations to uphold the right to justice and to investigate, prosecute and punish violations of human rights.

- 4. Declaring that the conduct referred to in paragraphs 3.1 and 3.2 above is inconsistent with the provisions of the South African Police Service Act 68 of 1995, the National Prosecuting Authority Act 32 of 1998 ("the NPA Act"), the Prosecution Policy issued in terms of s 179(5) of the Constitution, and the Policy Directives issued in terms

of s 21 of the NPA Act and serves to defeat the purposes of said laws, policy and directives in that it prevents the family of the deceased from reaching closure and substantially impairs the prospects of justice being served.

5. Declaring that the conduct referred to in paragraph 3.3 above is inconsistent with the provisions of the Inquests Act 58 of 1959 ("the Act") and serves to defeat the purpose of the Act in that it prevents the family of the deceased from reaching closure and substantially erodes the confidence of the public that deaths from unnatural causes will receive attention and be properly investigated.
6. Alternatively to prayer 2 above, reviewing and setting aside the refusal to take the decisions referred to in paragraphs 3.2 and 3.3 as unconstitutional and invalid; and compelling the first respondent to refer the matter to a formal judicial inquest within 30 calendar days of the granting of this relief; alternatively compelling the second respondent to finalize any investigations in this matter within 14 days of the granting of this relief; and compelling the first respondent to take a prosecutorial decision within 30 days of the date of this order.
7. Alternatively to prayers 2 and 6 above:

- 7.1 Reviewing and setting aside the failure or refusal to take the decisions referred to in paragraphs 3.2 and 3.3 above in terms of section 6 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA").
- 7.2 Compelling the first respondent to refer the matter to a formal judicial inquest within 30 calendar days of the granting of this relief; alternatively compelling the second respondent to finalize any investigations in this matter within 14 days of the granting of this relief; and compelling the first respondent to take a prosecutorial decision within 30 days of the date of this order.
8. Ordering the public release of the memorandum titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' dated 15 February 2007 addressed by the then National Director of Public Prosecutions to the then Minister of Justice and Constitutional Development.

9. Ordering the first to fourth respondents to pay the costs of this application and that such of the other respondents who may oppose the matter to pay the applicant's costs.
10. Granting the applicant further and/or alternative relief.

KINDLY TAKE NOTICE FURTHER that the affidavits of the **Applicant, Sizakele Ernestina Simelane, Antonio Lungelo Simelane, Junior Mzwandile Nkosinathi Simelane, Frank Dutton, Vusi Pikoli, Anton Ackermann, Dumisa Ntsebeza, and Alexander Borraine** and the annexures thereto will be used in support of this application.

KINDLY TAKE NOTICE FURTHER that the *in camera* founding affidavit of the **Applicant** and the *in camera* supporting affidavit of **Vusi Pikoli** and the annexures thereto will be used in support of this application. The former affidavit is to be served only on the first respondent (the National Director of Public Prosecutions) and the latter affidavit is to be served only on the first and third respondents (the Minister of Justice and Correctional Services). The aforesaid affidavits are to be held by the Registrar of this honourable Court as part of an *in camera* record and only to be released to the other respondents or the public on the order of this honourable Court.

TAKE NOTICE FURTHER THAT the Applicant has appointed the **LEGAL**

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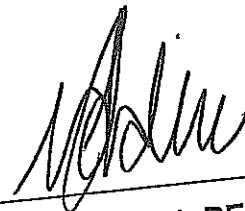
RESOURCES CENTRE as its attorneys of record at whose address the Applicant will accept service of all process in these proceedings.

TAKE NOTICE FUTHER THAT that should you intend opposing this application you are required:

- a) to notify the Applicant's attorneys in writing within 15 (fifteen) court days of service of this application on you;
- b) within 30 (thirty) court days after having given such notice to oppose this application to deliver your answering affidavits, if any; and further that you are required to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose is given, the application will be made to the above Honourable Court as soon as counsel for the Applicant may be heard.

DATED AT JOHANNESBURG ON THIS 19th DAY OF May 2015.



LEGAL RESOURCES CENTRE

Applicants' Attorneys
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Democracy Centre,
357 Visagie Street
Pretoria.
Ref: J56

TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT, PRETORIA

AND TO: THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS
First Respondent
c/o The State Attorney
SALU Building
316 Thabo Sehume Street
Pretoria
GAUTENG

SERVICE PER SHERIFF

THE NATIONAL COMMISSIONER OF
POLICE

Second Respondent
Wachthuis, 7th Floor
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SERVICE PER SHERIFF

THE MINISTER OF JUSTICE

Third Respondent
c/o The State Attorney
SALU Building
316 Thabo Sehume Street
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SERVICE PER SHERIFF

**THE NATIONAL MINISTER OF
POLICE**

Fourth Respondent
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SERVICE PER SHERIFF

WILLEM HELM COETZEE

Fifth Respondent
28 Augusta

SERVICE PER SHERIFF

Helderkruin
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1724
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ANTON PRETORIUS

Sixth Respondent
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Randburg
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SERVICE PER SHERIFF

FREDERICK B MONG

Seventh Respondent
12 Pecan Place
831 Mortimer Avenue
Mayville
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0084
GAUTENG

SERVICE PER SHERIFF

MSEBENZI TIMOTHY RADEBE

Eight Respondent
8 Roma Street
Carenvale
Honeyhills
1724

SERVICE PER SHERIFF

GAUTENG

alternatively

36 Stumke Street

Witpoortjie

Roodepoort

1724

GAUTENG

WILLEM SCHOON

Ninth Respondent

689 Verecunda Street

Dorandia Ext 2

0182

GAUTENG

SERVICE PER SHERIFF

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

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THE MINISTER OF JUSTICE

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

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FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

FOUNDING AFFIDAVIT

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I, the undersigned

THEMBISILE PHUMELELE NKADIMENG

state under oath as follows:

INTRODUCTION

1. I am an adult female. I am the Executive Mayor of City of Polokwane. I reside at 82 General Viljoen Street, Welgelegen, Polokwane. I am the First Applicant in this matter. I act in the interests of myself and my family and I depose to this affidavit on behalf of my wider family. In this regard I attach the confirmatory affidavits of my mother, Sizakele Ernestina Simelane and my two brothers, Antonio Lungelo Simelane and Junior Mzwandile Nkosinathi Simelane, which are annexed to this affidavit marked **TN1, TN2 and TN3**.
2. This case is about my late sister, Nokuthula Aurelia Simelane, ("Nokuthula") who was abducted, brutally tortured and enforcedly disappeared by the South African Security Branch ("SB") of the former South African Police ("SAP") in 1983. The police case number is: Priority Investigation: JV Plein: 1469/02/1996. More than 30 years later, and notwithstanding countless pleas, my family and I are still

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waiting for the National Prosecuting Authority ("NPA") to take a decision whether to prosecute the known suspects or not, or refer the matter to an inquest.

3. Although I only represent myself and my family in this application I submit that this case is representative of most cases arising from South Africa's conflicts of the past that were submitted by the Truth and Reconciliation Commission ("TRC") to the first respondent for further investigation and possible prosecution ("the TRC cases"). To the best of my knowledge the bulk of these cases have not been seriously investigated.
4. I submit that this failure represents a deep betrayal of those who gave their lives for the struggle for liberty and democracy in South Africa. It has also added significantly to the emotional trauma and anguish of their families, surviving victims and the wider community. I do not know why the new South African state has turned its back on victims who sacrificed so much, but it appears to me that this approach can only have been the product of a policy or decision to abandon these cases.
5. The supporting affidavits of Frank Dutton, Advocate Dumisa Ntsebeza SC, Alexander Boraine, Advocate Vusi Pikoli and Advocate Anton Ackermann SC are annexed hereto marked **TN4, TN5, TN6, TN7** and

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TN8.

- 5.1. The affidavit of Frank Dutton, a private investigator, outlines the inquiries he carried out on behalf of my family and it also includes his assessment of the investigations conducted by the first and second respondents.
- 5.2. The affidavit of Advocate Dumisa Ntsebeza SC, former TRC Commissioner and Investigation Unit Head, confirms that my sister's case was investigated by the TRC's Investigation Unit.
- 5.3. Alex Boraine, former Deputy Chairperson of the TRC, outlines in his affidavit the rationale for the TRC's amnesty process and why justice is necessary.
- 5.4. The supporting and *in camera* affidavits of Advocate Vusi Pikoli, former National Director of Public Prosecutions, set out the political interference that brought an end to the investigation and prosecution of the TRC cases.
- 5.5. Advocate Anton Ackermann SC, former Director of the Priority Crimes Litigation Unit of the NPA, describes in his supporting affidavit the efforts to pursue justice in the TRC cases and how he was stopped from taking these cases forward.

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6. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct. Where I make submissions of a legal nature I do so on the advice of my legal representatives.

Organisation of this affidavit

7. The scheme of this affidavit necessitates me setting out –
- 7.1. An overview of Nokuthula's story;
- 7.2. The relief sought and the approach of this affidavit;
- 7.3. A full description of the parties;
- 7.4. Description of the facts that gave rise to this application, including an overview of the conduct of the authorities under the control of the first to fourth respondents;
- 7.5. The impact of the failure of the second respondent to investigate Nokuthula's case timeously and of the failure of the first respondent to take a prosecutorial decision.
- 7.6. The relevant legal framework governing prosecutions and

TP

inquests.

- 7.7. The objections to the said delays, including why the delays are unreasonable.
- 7.8. The grounds of the relief which include upholding the interests of justice; as well as grounds of unconstitutionality, which involves dealing with violations of the rights to dignity, life, freedom and security of the person and to equal protection and benefit of the law; as well as the rule of law;
- 7.9. The grounds of review which deals with the fact that the delays are in conflict with the principle of legality; various provisions of the Promotion of Administrative Justice Act (PAJA); the special responsibility arising from South Africa's transition and the TRC process; and South Africa's international law obligations.
- 7.10. The grounds for a final interdict compelling the first respondent to refer my sister's case to an inquest or alternatively to take a prosecutorial decision.
- 7.11. The grounds of urgency.

Overview of Nokuthula's story

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8. In 1983 Nokuthula was a twenty-three years old university graduate and was a courier for Umkhonto we Sizwe ("MK"), the armed wing of the African National Congress ("ANC"), moving between Swaziland and South Africa. She was betrayed by one of her own and was abducted and brutally tortured by the Security Branch of the former SAP in September of 1983.
9. Nokuthula was never seen again. We know from the TRC hearings that my sister suffered terribly at the hands of the SB. We know that she refused to collaborate with the forces of Apartheid. For this she paid the ultimate price.
10. Nokuthula' story is rooted in South Africa's bitter and divided past. She devoted her life to resisting the pernicious system of Apartheid. Notwithstanding the fact that Nokuthula' sacrifices helped to lay the basis for South Africa's democracy with its enshrined freedoms, the new South Africa has turned its back on her. My family and I have been searching for answers for more than 30 years. We have pleaded with authorities to take the necessary action to bring closure to this case. These pleas have fallen on deaf ears. Nonetheless, I have always refused to give up the search for the truth and justice.
11. My family and I have not rested since we learnt that my sister went missing. We know the most terrible things about what she suffered. But we don't know how she died, and where her body is today. We

TP

have spent three decades looking for Nokuthula. We even appointed private detectives to assist us. Until we find her remains, or get answers about what really happened to her, we remain trapped in the past.

12. We did not expect the former South African Police to investigate themselves. However we firmly believed that the new democratic South Africa would take the necessary steps. We were wrong. This was the second betrayal of Nokuthula and everything she stood for. This betrayal cut the deepest. It deprived me and my family of closure and our right to dignity. My father went to his grave in 2001 without knowing what happened to Nokuthula. My mother, now sick and old, fears that she will die without knowing; and without burying Nokuthula's remains with the dignity she deserves.
13. In 2001 the Amnesty Committee of the TRC concluded that the white SB officers had lied to the Commission about what had happened to Nokuthula during her unlawful captivity, in particular the torture she sustained. They nonetheless granted amnesty to those officers for Nokuthula's kidnapping. The Amnesty Committee betrayed its own law, which states that amnesty can only be granted in exchange for the truth and full disclosure.
14. In relation to the amnesty process it is noteworthy that nobody applied

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for amnesty for Nokuthula's murder and not all the perpetrators applied for amnesty for her kidnapping. These included Msebenzi Timothy Radebe, eighth respondent and Willem Schoon, ninth respondent, the latter being the Commander of Security Branch C1 Section, which carried out the offences against Nokuthula.

15. The new police service, the South African Police Service (SAPS) and the NPA could have pursued this case. However, even though a police docket was opened in 1996 little or no official action followed. After the amnesty decision the matter was referred to the NPA. When I approached officials at the NPA's Priority Crimes Litigation Unit ("PCLU"), which was responsible for the TRC cases, they advised me that their hands were tied as they were waiting for a new policy to deal with the so-called political cases. Until this new 'policy' was issued an effective moratorium on pursuing the TRC cases was in place. When the amendments to the NPA's Prosecution Policy emerged in late 2005 it essentially created a backdoor amnesty for perpetrators of so-called political crimes. It gave such perpetrators, like my sister's killers, a second opportunity to escape justice.
16. Together with the widows of the Cradock Four, the young freedom fighters murdered by a police hit squad in 1985, I went to court to challenge the policy in the matter of *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (TPD case no 32709/07) (the Nkadimeng case). The widows of the Cradock Four

TPD

are also still waiting for justice. In 2008 the High Court in Pretoria struck down the amendments to the Prosecution Policy, declaring it to be absurd and unconstitutional. In response to the argument of the NPA that dissatisfied victims could pursue private prosecutions, Judge Legodi held at paragraph 16.2.3.3 of the judgment that:

"...crimes are not investigated by victims. It is the responsibility of the police and prosecution authority to ensure that cases are properly investigated and prosecuted."

17. During this case the National Director of Public Prosecutions disclosed a secret 2004 government report titled "*Report of the Amnesty Task Team*". This report, to be discussed below, explored ways of promoting impunity for perpetrators of apartheid-era crimes. In my view this report is one of the clearest reflections of the unstated policy of the Government not to energetically pursue justice in respect of cases where amnesty was denied or not applied for. The supporting affidavit of Advocate Vusi Pikoli serves to confirm that political interference effectively stopped the TRC cases. The many years of inaction and the persistent refusal to finalize my sister's case is entirely consistent with such policy.
18. We thought that the striking down of the amendments to the Prosecution Policy meant that the path was eventually cleared for justice to take its course. Again we were wrong. This time the

TPD

prosecutors claimed that the police were refusing to provide investigators. Again they said their hands were tied. It took a high-level intervention for an investigating officer to eventually be appointed to the case in 2010; but the docket had apparently gone "missing".

19. By the end of 2012, even after finding the docket, there was no progress. It was clear to me that the authorities were not going to investigate the case seriously, let alone prosecute anyone. They even refused to charge those police officers involved in the kidnapping who did not apply for amnesty. At the beginning of 2013, the 30th year of Nokuthula's disappearance, and 18 years since the opening of the police docket, I gave up on a prosecution and demanded the holding of a judicial inquest into her death. This request was refused. Remarkably, the NPA claimed that their investigations were still not yet complete.

20. My family and I do not believe that the NPA is acting in good faith. Indeed, we have lost all confidence in the prosecutors and police. They have betrayed our trust. Given their past idleness such investigations could drag on indefinitely while witnesses and suspects grow old and die. Since January 2013 my lawyers and I have engaged in extensive communications with the offices of the first and second respondents in an effort to persuade them to finalize their apparent investigations or at least refer the case to a judicial inquest. More than 20 months later these efforts have come to naught.

TPD

21. The historic compromise which gave birth to the new South Africa demanded that those perpetrators denied amnesty, or who did not apply for amnesty, would face follow-up. This has not happened. The state has systematically and deliberately dragged its feet or blocked justice in this case and many others. We know who abducted, tortured and murdered Nokuthula. They were meant to face justice or appear before a judicial inquest. More than 30 years have passed since Nokuthula's disappearance, but neither has happened. We cannot bury her and we can find no peace. The betrayal of my sister, and what she stood for, is almost complete.

Relief sought

22. This application seeks, among other things, an order to:

- 22.1. Compel the first and third respondents to take the necessary steps, within 30 days of the granting of this order, to refer the kidnapping, torture, disappearance and murder of my sister in 1983 to a formal inquest before the High Court in terms of sections 5 and 6 of the Inquests Act 58 of 1959 in the interests of the proper administration of justice and in order to prevent a failure of justice.

- 22.2. Declaring that:

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22.2.1. the prolonged delay by the first and second respondents in investigating the kidnapping, torture, disappearance and murder of the deceased in 1983;

22.2.2. the ongoing failure or refusal of the first respondent to take a decision whether to prosecute or not to prosecute the known suspects (a prosecutorial decision); or,

22.2.3. the ongoing failure or refusal of the first respondent to refer the above named case to a formal judicial inquest,

is a gross violation of my rights to human dignity and equality; and is inconsistent with the rights to life, freedom and security of the person, the rule of law and South Africa's international law obligations to uphold the right to justice and to investigate, prosecute and punish violations of human rights.

22.3. Declaring that the conduct referred to in paragraphs 22.2.1 and 22.2.2 above is inconsistent with the provisions of the South African Police Service Act 68 of 1995, the National Prosecuting Authority Act 32 of 1998 ("the NPA Act"), the Prosecution Policy issued in terms of s 179(5) of the Constitution, and the Policy

TP

Directives issued in terms of s 21 of the NPA Act and serves to defeat the purposes of said laws, policy and directives in that it prevents the family of the deceased from reaching closure and substantially impairs the prospects of justice being served.

22.4. Declaring that the conduct referred to in paragraph 22.2.3 above is inconsistent with the provisions of the Inquests Act 58 of 1959 ("the Act") and serves to defeat the purpose of the Act in that it prevents the family of the deceased from reaching closure and substantially erodes the confidence of the public that deaths from unnatural causes will receive attention and be properly investigated.

22.5. Alternatively to paragraph 22.1 above, reviewing and setting aside the refusal to take the decisions referred to in paragraphs 22.2.2 and 22.2.3 as unconstitutional and invalid; and compelling the first respondent to refer the matter to a formal judicial inquest within 30 calendar days of the granting of this relief; alternatively compelling the second respondent to finalize any investigations in this matter within 14 days of the granting of this relief; and compelling the first respondent to take a prosecutorial decision within 30 days of the date of this order.

22.6. Alternatively to paragraphs 22.1 and 22.5 above:

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- 22.6.1. Reviewing and setting aside the failure or refusal to take the decisions referred to in paragraphs 3.2 and 3.3 above in terms of section 6 of the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA").
- 22.6.2. Compelling the first respondent to refer the matter to a formal judicial inquest within 30 calendar days of the granting of this relief; alternatively compelling the second respondent to finalize any investigations in this matter within 14 days of the granting of this relief; and compelling the first respondent to take a prosecutorial decision within 30 days of the date of this order.
- 22.6.3. Ordering the public release of the memorandum titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' dated 15 February 2007 addressed by the then National Director of Public Prosecutions to the then Minister of Justice and Constitutional Development.

Approach of this affidavit

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23. Given the nature of this application, I advance certain legal submissions on the advice of my legal representatives. I set out in this affidavit a range of factual matters and submissions all of which serve to demonstrate the basis of this application. I also set out certain factual matters which are contained in the Truth and Reconciliation Commission report concerning the disappearance and murder of Nokuthula at the hands of apartheid-era security personnel. I also attach certain transcripts of Truth and Reconciliation Commission hearings confirming certain facts concerning the disappearance and murder of Nokuthula.

THE PARTIES

Applicant

24. I am the Applicant. My sister, Nokuthula, disappeared after being abducted by the Security Branch.

Respondents

25. The First Respondent is the National Director of Public Prosecutions ("the NDPP"), appointed by the third respondent in terms of section 10 of the National Prosecution Authority Act 32 of 1998 ("the NPA Act"), and who, in terms of section 5 of the NPA Act, is the head of the Office

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of the National Director of Public Prosecutions, which in turn is a component of the Single National Prosecution Authority ("the NPA") established in terms of section 179 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"). The First Respondent's address for service is care of the State Attorney, SALU Building, 316 Thabo Sehume Street, Pretoria, Gauteng.

26. The Second Respondent is the National Commissioner of Police acting in her official capacity. The Second Respondent's address for service is Wachthuis, 7th Floor, 229 Pretorius Street, Pretoria.
27. The Third Respondent is the Minister of Justice, the cabinet member responsible for the administration of justice, who, in terms of section 179(6) of the Constitution, exercises final responsibility over the prosecuting authority, including the First Respondent. The Third Respondent's address for service is care of the State Attorney, SALU Building, 316 Thabo Sehume Street, Pretoria, Gauteng.
28. The Fourth Respondent is the National Minister of Police acting in his official capacity. The Fourth Respondent's address for service is Wachthuis, 7th Floor, 229 Pretorius Street, Pretoria.
29. The Fifth Respondent is Willem Helm Coetzee, an adult male with identity number 520409 5090 000 and residing at 28 Augusta Bellini

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Street, Wilgeheuwel, 001724, Gauteng.

30. The Sixth Respondent is Anton Pretorius, an adult male with identity number 5804075046086 and residing at 20 Duneden, 152 Malcolm Street, President Ridge, Randburg, 2194, Gauteng.
31. The Seventh Respondent is Frederick Barnard Mong, an adult male with identity number 5805245117004 currently resideing at 12 Pecan Place, 831 Mortimer Avenue, Mayville, Pretoria.
32. The Eighth Respondent is Msebenzi Timothy Radebe, an adult male with identity number 5006165718083 and residing at 8 Roma Street, Honeyhills, 1724, alternatively, 36 Stunke Street, Witpoortjie, Roodepoort, 1724, Gauteng.
33. The Ninth Respondent is Willem Schoon, an adult male with identity number 3103015023087, a former Brigadier and Commander of the SAP's Security Branch C1 Section and residing at 689 Verecunda Street, Dorandia Ext 2, 0182, Gauteng.

DETAILED BACKGROUND

34. Nokuthula disappeared after being abducted by the Security Branch on or about 10 September 1983. The brief circumstances of Nokuthula's disappearance which are described in the records of the

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TRC Hearings are as follows:

- 34.1. Nokuthula was a student at the University of Swaziland and also a member of MK, the armed wing of the ANC.
- 34.2. During 1982, Nokuthula joined the Transvaal Urban Machinery ("the TUM") of MK, of which the Chief of Staff was Gilbert Thwala. Nokuthula operated as a courier for one of the MK units within the TUM.
- 34.3. It was established during the TRC hearings that Nokuthula disappeared while on a mission in Johannesburg after making contact with a certain Norman L Mkhonza at the Carlton Centre.
- 34.4. It also emerged that in fact she was abducted by the Security Branch with the help of Mkhonza, whom Nokuthula believed was a fellow MK member when in fact he was an apartheid state "askari" (a former MK member turned state operative) connected to the Soweto Intelligence Unit of the South African Security Police.
- 34.5. Having been alerted to the arranged meeting that was to take place between Nokuthula and her colleagues (although apparently not aware of Nokuthula's identity), the commander of the Soweto Intelligence Unit, Willem H Coetzee (the Fifth

TPD

Respondent), conveyed this information to the overall commander of the Soweto Security Police, the late Brigadier H Muller. Muller ordered that Nokuthula should be abducted with a view to turning her into an agent of the Security Police. Pursuant to this order, Coetzee gathered a group of Security Police officers, including Mkhonza, Anton Pretorius (the Sixth Respondent), J F Williams, J E Ross, Peter Lengene (now deceased), Frederick B Mong (the Seventh Respondent), M L Selamolela and Msebenzi Timothy Radebe (the Eighth Respondent) and prepared them for the operation.

- 34.6. On the day of the planned meeting, and in accordance with the plan decided upon by the group of police officers mentioned above, Mkhonza lured Nokuthula to the basement of the Carlton Centre where she was apprehended and abducted. She was manhandled, *inter alia* by Radebe, placed in the boot of a police vehicle and transported to the "Custodum" Flats in Norwood, where the Security Police had an operational office in the cleaner's quarters on the roof of the building. Nokuthula was left in one of the police vehicles out of sight of the general public. She was subsequently removed to the operational office where she was kept for a few days.

- 34.7. It appears from the Amnesty Hearing record that Coetzee stated that Willem Schoon was apprised of the abduction and gave

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authorisation for the 'kopdraai'. He and Mong accompanied Brigadier Muller (deceased OC of Soweto SB) to Pretoria to brief Schoon on the Saturday afternoon immediately following the Carlton Centre operation.

- 34.7.1. A TRC news release dated 24 June 1999 said that Brigadier Schoon had also applied for amnesty in respect of the crimes committed against Ms Simelane. A copy of this press release is annexed hereto marked "TN9" However this application never proceeded.
- 34.7.2. Testifying before another Amnesty Committee hearing Schoon stated that the total onslaught of the ANC/SACP forced the Security Branch to operate outside the boundaries of the law (Amnesty Committee hearing in Pretoria on 14 June 1999 into the murders of K. McFadden and Z. Nyanda in Swaziland during 1983.). Schoon commanded Section C of the Security Branch from 1981 until 1990. Amongst the units under his control was the notorious Vlakplaas unit.
- 34.7.3. The TRC found that Security Branch members were instructed to commit crimes that included murders, cross border raids, kidnappings, poisonings, bombings, illegal detentions, torture and defeating the ends of justice. (TRC

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Report Volume 5).

- 34.8. It also emerged from the TRC hearings that Nokuthula was kept at the operational office at Custodem, and was interrogated and continuously assaulted by Coetzee, Pretorius, Lengene, Mong, Selamolela, Radebe and MM Veyi (hereinafter referred to as "the perpetrators"). The assaults were of a serious nature and they amounted to torture. (I note that Williams, Ross and Mkhonza had ceased their participation in the incident after the abduction at the Carlton Centre and Veyi was a new addition to the group after the abduction.)
- 34.9. Nokuthula was subsequently transferred to secluded premises on a farm in the district of Northam in the present North West Province. Here she was detained for a period of approximately 4 to 5 weeks. The interrogation and torture continued on the farm.
- 34.10. Throughout the period of her detention, which lasted approximately 5 weeks, Nokuthula was interrogated and severely assaulted by the perpetrators. The interrogation and the assaults were conducted under the command of Coetzee who was in overall command of the group of Security Police.
- 34.11. Towards the end of her stay on the farm, and as a result of severe torture, Nokuthula's physical condition had deteriorated to

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such an extent that she could hardly be recognised. She had great difficulty in walking and her physical condition had generally deteriorated severely.

34.12. Nokuthula never returned to her family in Swaziland after having been abducted by the South African Security Police and has since disappeared.

34.13. It appears from the docket of the police investigation that several witnesses and suspects linked to Nokuthula's disappearance were traced and statements were taken. In particular, the docket indicates that:

34.13.1. A number of witnesses stated under oath in their statements that they personally witnessed assaults and/or torture perpetrated against Nokuthula or they saw clear evidence of assault marks on her face and body. These witnesses were all members of the SAP's Security Branch at the time and worked under the direct command of W H Coetzee and A Pretorius. At the time, Coetzee was a warrant officer and Pretorius was a sergeant;

34.13.2. While she was kept at the farm in Northam, Nokuthula was interrogated, assaulted and tortured. Nokuthula's hands and feet were cuffed. Her sleep was kept to a minimum.

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She was kicked and slapped. A bag was pulled over her head. She was given electric shocks. She was thrown into a zinc farm dam, allegedly by Radebe. At times she could no longer stand.

34.13.3.

A statement made by Veyi and contained in the docket indicates that the last time he saw Nokuthula was near the 4 way stop junction of the Fochville/Carltonville and Johannesburg/Potchefstroom roads. She was in the boot of Coetzee's vehicle and was alive with her hands cuffed behind her back. Her feet were also cuffed. A few days later, when he asked Pretorius where Nokuthula was, he received the response: "*Moenie [so] baie vrae vrag nie*" (don't ask so many questions). Veyi was told by one of his colleagues, Sergeant Mathibe, that Coetzee and Pretorius had shot, killed and buried Simelane near Rustenburg. Mathibe has since died.

34.13.4.

It also appears from the docket that Lengene originally made a statement to the investigators while he was still under the direct command of Coetzee. In a subsequent interview with the investigating officer (Captain Leask), Lengene admitted that his "*original statement was not the whole truth.*" Before making his statement he had met with Coetzee and Pretorius who told him that "*it was up to him*

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and [Mkhonza] to save *their skins*". Pretorius warned Lengene that they would be provided with a copy of his statement by Dir. Neville Thoms (then Head of Priority Crimes, Gauteng). He also said that the investigating officer would not be able to prove any charges as "*he had no proof of a body*". Lengene stated that after the first interview he had been taken to Coetzee who wanted to know what was said in the interview. He was told to rewrite a statement, which Pretorius vetted and which he was instructed to keep it in a safe place so that it could later be handed to an attorney who was being arranged through the police.

34.13.5. Lengene stated that he feared Coetzee and Pretorius very much and "*at no cost must they become aware of my statement*" He has since died.

34.13.6. It also appears from the docket that on 10 February 1996 Pretorius and Coetzee secretly met with Mkhonza and coached him regarding his version should Captain Leask approach him. This discussion was secretly taped by the investigation team and I am advised that the tape and/or a transcript thereof are in the possession of the investigators.

34.13.7. The docket also contains a statement from one Mokone

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Sefuthi, a former policeman who indicates that he was posted to guard Nokuthula while she was being held. According to Sefuthi, Coetzee, Pretorius and Mong continuously threatened Nokuthula with death during the interrogations. After Nokuthula had been removed from the farm, Sefuthi asked Pretorius what had happened to her. Pretorius replied that that Sefuthi "*would never see her again*".

34.14. I respectfully submit that these facts are all contained in the police docket that was provided to the TRC, or were contained in the findings of the TRC Amnesty Committee in relation to the amnesty application of the perpetrators (with the exception of Radebe, who did not apply for amnesty), which are dated 23 May 2001 and annexed hereto marked "TN10". I have not annexed all the supporting documentation as it is readily available to the respondents. The purpose of the reference to the various statements is to give an overview of the available evidence (which would have to be tested in a court of law) in order to indicate the circumstances surrounding Nokuthula's disappearance and likely murder and to indicate that known suspects have not been prosecuted or have not appeared before an inquest.

34.15. Nokuthula's disappearance and the events that have transpired

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since the TRC hearings have left me and my family with a deep sense of loss and anguish.

- 34.16. Since her disappearance, we have spared no effort in our search for her or her remains. We enquired at the South Africa / Swaziland border whether she had crossed into South Africa, but there was no record of her.
- 34.17. When it was suggested that she may have been working for the anti-apartheid movement, the family made inquiries with the ANC in Swaziland, and in the neighbouring countries such as Botswana. All these efforts proved fruitless.
- 34.18. Her disappearance was reported to the police, both in Swaziland and, subsequently, in South Africa.
- 34.19. All these efforts proved fruitless until the Sowetan newspaper published two stories about Nokuthula's disappearance on 27 January 1995 and 6 February 1995. Copies of the newspaper reports are annexed hereto marked "TN11" and "TN12"
- 34.20. The newspaper articles appear to have prompted the police to open an investigation docket. A police investigation under case number CAS1469/02/1996 was opened under the auspices of the

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Priority Crimes Unit based at John Vorster Square (now Johannesburg Central Police Station). The investigating officer was Captain Leask. The crimes being investigated were murder and kidnapping.

34.21. On 19 February 1996 Director Neville Thoms, the Head of Priority Crimes, Gauteng addressed a letter to the Secretariat of Safety and Security and the National Head of Priority Crimes summing up the investigations to date. A copy of the letter is annexed hereto marked "TN13". A further letter, expanding on the contents of this letter was sent to the Divisional Chief of the National Crime Investigation Services in Pretoria on 26 February 1996, and a copy thereof is annexed marked "TN14". As these letters refer to details of the investigation they are not attached to the founding affidavit but are instead attached to my *in camera* affidavit. I refer to my *in camera* affidavit at paragraph 43 below.

34.22. According to the investigation diary in the docket, the case was discussed with Deputy Attorney General Kevin Attwell and Advocate De Vries on 23 February 1996. They recommended that the matter be discussed with Dr D'Oliviera of the Third Force Investigations team. A discussion was then held with Dr D'Oliviera. At this meeting it was decided that all possible evidence must be gathered and the investigation must proceed.

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- 34.23. An entry made in the investigation diary on 22 October 1996 by Thoms indicates that the matter was to be held back pending the instructions of the Attorney General. Advocate Ebrahim was reading the statements and exhibits. Captain Leask then filed the investigation notes in the "*respective files*". No instructions from Advocate Ebrahim were recorded in the investigation diary.
- 34.24. The final entry in the investigation diary prior to the amnesty hearings before the TRC on 10 February 1998 reads "*amnesty hearings o/s*". I presume that "o/s" means "outstanding".
- 34.25. On 6 July 1998, Coetzee was warned of his rights in terms of section 35 of the Constitution in respect of Nokuthula's murder. He declined to make a statement. A copy of the warning is annexed hereto marked "TN15".
- 34.26. Our family was involved in the TRC process. On 3 June 1997, Matthew Simelane (Nokuthula's and my late father) testified in a "victims' hearing" before the Human Rights Violations Committee. He explained the family's plight and the efforts they had undertaken to try and find the truth, but at the end of the hearing, the chairperson of the Committee said that it was "*in the position very much that you are at the moment and that is to watch and wait for the outcome of the amnesty applications which have been made*". A copy of the transcript of the hearing is annexed

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hereto marked "TN16".

- 34.27. After the amnesty applications were filed, it quickly became clear that some of the perpetrators were willing to comply with the procedure, tell the truth and acknowledge their role in Nokuthula's torture and disappearance. On the other hand, Pretorius, Coetzee and Mong took a confrontational and uncooperative attitude, complying only to the extent that they felt was necessary to obtain amnesty. They refused to apologise to the family or to demonstrate any sense of remorse for the pain caused to the Simelane family.
- 34.28. It appears from the findings of the TRC Amnesty Committee (annexure TN10 above) that all of those who applied for amnesty in respect of Nokuthula's abduction were granted amnesty. In addition, Selomolela and Veyi were granted amnesty in respect of her torture.
- 34.29. The TRC Amnesty Committee however, declined to grant amnesty to Coetzee, Pretorius and Mong in respect of the torture of Nokuthula on the basis that they had failed to make "a *full disclosure of all relevant facts*" as required by section 20(1)(c) of the Promotion of National Unity and Reconciliation Act 34 of 1995 (the TRC Act). In particular, the majority of the Amnesty Committee found that:

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"[they] orchestrated their testimony in an attempt to minimize their roles in the torture of Ms Simelane. They were evasive and resorted to prevarication and long-winded technical explanations whenever they sensed difficulties or shortcomings in their versions. They studiously failed to furnish direct answers to questions which they regarded as potentially damaging to their case."

and

"we conclude that the evidence of Coetzee, Pretorius and Mong is untruthful insofar as it concerns the duration and extent of Ms Simelane's torture whilst she was in the custody of the Security Police, especially on the farm. Coetzee, Pretorius and Mong have accordingly failed to make a full disclosure of all relevant facts in regard to this aspect of the matter as required by the provisions of Section 20 of the Act. Their applications are accordingly REFUSED on this aspect."

- 34.30. It therefore logically follows that the refusal of Coetzee, Pretorius, Mong's amnesty applications (and the fact that Radebe and Schoon did not apply for amnesty) meant that they should have faced prosecution for their respective roles in the kidnapping and/ or torture and/ or the likely murder of Nokuthula.

Attempts to seek justice

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35. Since the refusal of Coetzee, Pretorius and Mong's application for amnesty on 23 May 2001, my family and I have made a number of attempts to persuade the NPA to investigate and launch criminal proceedings against them (and Radebe) in respect of Nokuthula's torture, disappearance and possible murder, including meetings with the PCLU.
36. During 2005 the Foundation for Human Rights ("FHR") took up Nokuthula's case and met with members of the PCLU and urged them to take various steps in the short term, including:
- 36.1. Prosecuting suspects who did not apply for amnesty for kidnapping since kidnapping is listed as one of the exceptions to the 20 year prescription rule in section 18 of Act 51 of 1977. In particular it was pointed out that Radebe placed himself at the scene of Nokuthula's abduction and that other police witnesses implicated him in various acts related to her kidnapping;
- 36.2. Preferring charges of defeating the ends of justice against two of the senior officers (Coetzee and Pretorius) for intimidating a junior officer (Sergeant Lengene) into making a false statement and for attempting to coach a witness (Norman Mkhonza) into making a false statement.

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37. The FHR also presented the PCLU with a memorandum dated 18 August 2005 setting out the basis for the said recommendations, a copy of which is annexed hereto marked "TN17". The PCLU declined to take these proposed charges forward. At the time it was claimed that a suspect like Radebe was a "*small fish*". The suggestion that the pursuing of the 'small fish' could lead to the 'big fish' fell on deaf ears.
38. The PCLU has put up various excuses to me and my representatives over the years as to why they have not been able to take Nokuthula's case forward. These include the following excuses:
- 38.1. Insufficient evidence: In my view cases that are not seriously investigated will always suffer from a lack of evidence. In particular it has been claimed that none of the evidence that was led before the Truth and Reconciliation Commission (TRC) may be used in subsequent legal proceedings. I am advised that this view is entirely without merit. It is based on an erroneous reading of the '*use immunity*' provision contained in section 31 of the TRC Act which, in any event, was not invoked in any of the proceedings before the TRC dealing with Nokuthula.
- 38.2. Statute of limitations: Initially the PCLU advised that there was sufficient evidence to proceed against certain of the officers on charges of assault to do grievous bodily harm in respect of the physical torture of Nokuthula. However, they advised that they

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were prevented from proceeding with assault prosecutions as the right to prosecute such offences had prescribed by virtue of the 20 year prescription rule contained in section 18 of the Criminal Procedure Act 51 of 1977. In order to address this legal obstacle during 2006 the FHR presented the PCLU with a legal opinion in which it was concluded that the physical and mental abuse perpetrated against Nokhuthula constituted the international crime of torture. I am advised that by 1983 torture was a prohibited and unlawful act in terms of customary international law. South Africa was accordingly obliged to investigate and prosecute transgressions of customary international law as well as violations of the Geneva Conventions. While the PCLU did not dispute the conclusions of this opinion they did not take the matter forward.

- 38.3. Effective moratorium: Up until 2006, the PCLU advised that their hands were, in any event, tied by an effective moratorium against the prosecution of the so-called political cases of the past. Although it was not clear who had imposed such a moratorium they were not permitted to proceed with any "*political cases*" until a standardized policy had been put in place to deal with such cases. Towards the end of 2005 the Prosecution Policy was duly amended. It provided for an effective back-door amnesty for those responsible for so-called political crimes and who had not previously applied for amnesty. As mentioned above, together

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with the wives of the Cradock 4, I applied to court to have this policy set aside as unconstitutional.

- 38.4. Bureaucracy: It was difficult for the PCLU to work on these types of cases because it was difficult to convene the multi-departmental Departmental Task Team comprising members of, amongst other departments, the Department of Justice and Constitutional Development, the SAPS and the National Intelligence Agency. This group was apparently required to advise the NDPP and the PCLU which cases to take forward or not.
- 38.5. Litigation: The case I brought against the aforesaid amendments to the prosecution policy, the Nkadimeng case, apparently prevented or stopped investigations into political crimes. No reason has been provided as to why this litigation should have caused the halting of such investigations.
- 38.6. Lack of investigators: Following the striking down of the amendments to the prosecution policy I was advised that the PCLU was still unable to take this matter forward because they lacked police detectives to carry out the necessary investigations. Apparently officials under the control of the second respondent refused or neglected to assign detectives to the so-called political cases.

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- 38.7. Inquest more appropriate than prosecution: On several occasions members of the PCLU advised that the family should rather seek an inquest than a prosecution. Until 2013 this proposition was rejected by me and my family as we felt that there was sufficient evidence to warrant prosecutions against some or all of the potential accused.
- 38.8. Lost docket and various administrative issues: In or about 2010 the docket apparently went missing and was rediscovered at some later stage. This and other issues are set out in correspondence attached to this affidavit.
39. I have even appointed private detectives. I have reported the inaction of the South African authorities to the United Nations Special Rapporteur on Enforced Disappearances who in turn corresponded with the government. A copy of the letter received from the Chairperson of the Working Group on Enforced or Involuntary Disappearances dated 24 July 2013 is annexed hereto marked "TN18". Nokuthula's case has been covered in the media (an example is my opinion piece in the City Press dated 26 December 2013, a copy of which is annexed hereto marked "TN19"). A documentary about my sister's story was made and screened on TV ("Betrayal", SABC, Grey Matter Media, Johannesburg: Film Resource Unit [distributor], ©2006.). A copy can be made available to this

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honourable Court on request. A statue was erected in her memory in Bethal. However the authorities charged with delivering justice appear to be impervious to any and all persuasion and we are still without answers.

The request for a formal judicial inquest

40. During January 2013 I met with the investigating officer, Captain Masegela. He advised me that he had submitted his investigation report to Advocate Chris Macadam at the PCLU during July 2011. In this report he proposed that this matter be dealt with in an inquest. I assume that this report was submitted in compliance with section 4 of the Inquest Act.
41. By the beginning of 2013 I had lost all faith in the ability of the first and second respondents to deal competently with sister's case. I looked into the possibility of launching a private prosecution but was advised that I would have to raise a considerable sum of money to lodge as security of costs for the legal costs of the accused, which I would have to pay if the accused were acquitted. I could not afford such costs. I accordingly wrote a letter to the Acting NDPP on 29 January 2013 requesting that my sister's case be referred to a formal inquest before the High Court, a copy of which is annexed hereto marked "TN20". I wrote:

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"If the authorities were going to prosecute this matter such prosecution would have taken place many years ago. This case has dragged on for way too long, and such delay has undermined the prospects for justice and played into the hands of the perpetrators. With every day that goes by without action being taken, the interests of justice are severely eroded. Moreover, and most regrettably, we have lost complete faith in the PCLU to run a successful prosecution."

42. Between January 2013 and February 2014 my representatives and I entered into a period of intensive communications with the first and second respondents and responsible officials within their departments. Copies of these communications, inclusive of correspondence, emails and notes, are referred to in the timeline set out below.
43. During the aforesaid period we attempted to persuade the first respondent to refer my sister's case to a formal inquest; alternatively to finalize its investigations speedily and make a prosecutorial decision. These attempts proved fruitless. The first and second respondents defended the delays and the ongoing investigation. An account of these exchanges is included the investigative timeline, set out below, and in the affidavit of Frank Dutton, annexed hereto as "TN4". Since the annexes referred to in the investigative timeline include correspondence between my attorneys and the NPA and SAPS, as well as extracts from the police docket, certain of these annexes are not attached to this affidavit but are attached to my *in camera* affidavit

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marked "TN21" which is contained in the *in camera* record. 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.

Investigative Timeline

Date	Action	Reference
11 Sept. 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)
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 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

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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.	<ol style="list-style-type: none"> 1. Extracts of from docket. (Annex TN21.1) 2. Letter from PCLU, 5 December 2013 (Para 5.1.6) (Annex TN21.2)
1996/97	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 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)	TRC Amnesty Hearing AC/2001/185
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)

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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
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)

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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 makes submission on behalf of family re: prosecutions of persons refused amnesty.	Letter from PCLU, 5 December 2013, para 5.1.4. (Annex TN21.2)
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)

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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	<ol style="list-style-type: none"> 1. Duplicate Case Docket forwarded to Superintendent Bester of DPCI by PCLU requesting investigation to determine availability of witnesses; confirmation of statements; and other matters. 2. Police Captain Masegela of DPCI was appointed to investigate matter 	<ol style="list-style-type: none"> 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 (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.	Letter from Advocate Macadam of NPA, Deputy Director of Prosecutions and Deputy Head of PCLU dated 27 October 2010 (Annex TN21.6)

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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 Nkadameng 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	<ol style="list-style-type: none"> 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. 	<ol style="list-style-type: none"> 1. Information supplied to Captain Masegela to Thembi at a meeting 2. Letter from Dr. Ramail NDPP dated 31 January 2013, para 16 (Annex TN21.3).
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)

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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. Nkadimeng to NPA dated 29 January 2013 (Annex TN20)
31 January 2013	NDPP says that Adv. 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 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.	letter from T.P. Nkadimeng 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	Adv Macadam of PCLU instructs Col Xaba of DPCI to undertake various investigations:	Letter from Adv. Macadam Colonel Xaba of DPCI dated 13 February 2013 (Annex TN21.9)
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.	<ol style="list-style-type: none"> 1. Letter from NPA, 13 August 2013 (Annex TN21.4) 2. Minutes of Meeting (Annex TN21.10)

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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 a 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)
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 between Adv. Macadam and 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 on various aspects.	Emails between Adv. Macadam and Adv. Palmer 17 May 2013 (Annex TN21.16)

26 June 2013	<p>Canvasses the following issues:</p> <ul style="list-style-type: none"> 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)
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) (representin family) to NPA dated 31 Ji 2013 (Annex TN31)
5 August 2013	Letter from LRC to Acting NDPP disputing further reasons for delay	Letter dated 5 August 201 responding to Adv Macadam email dated 31 July (Annex TN32)
13 August 2013	Skeletal remains have been found and DNA testing is being conducted.	Letter from NPA, Acting NDPP, Advocate Jiba dated 13 August 2013 pag 3 sub paragraph vii. (Annex TN21.4)

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5 December 2013	<ul style="list-style-type: none"> • 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. 	Letter from PCLU, 5 December 2013. (Annex TN21.2)
16 January 2014	<p>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.</p> <p>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.</p> <p>Westonaria Plot- a possible exhumation of this plot should not cause delays in finalisation - unless there is specific evidence of a burial site.</p> <p>Requests a meeting with the acting NDPP to discuss these issues</p>	Letter from Legal Resource Centre (representing family to NPA dated 16 January 2014 (Annex TN21.18)
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)

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10 February 2014	<p>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.</p> <p>An expert in craniofacial superimposition was unable to make an identification.</p> <p>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.</p> <p>Pending forensic results the investigator will continue the investigations identified by Adv. Macadam.</p>	<p>Letter from General Dramat, National Head of DPCI dated 16 January 2014 (Annex TN21.19)</p>
26 February 2014	<p>Family is concerned to note that the SAPS does 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?</p>	<p>Letter from Legal Resource Centre (representing family to General Dramat of DPC dated 26 February 2014 (Annex TN21.20)</p>
February to July 2014	<p>No responses received to LRC letters to NPA dated 16 January 2014 and to the DPCI dated 26 February 2014. No other reports received.</p>	

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10 July 2014	<p>Letter from LRC to the NDPP (copied to Adv. Abrahams and Macadam) noting that:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>No response was received from the NDPP.</p>	Letter from LRC to the NDPP dated 10 July 2014 (Annex TN33)
10 July 2014	<p>Letter from LRC to Lt-Gen. A Dramat, National Head: Directorate for Priority Crimes Investigation (DPCI), SAPS noting that:</p> <ul style="list-style-type: none"> • 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 Nation Head: DPCI dated 10 July 2014 (Annex TN34)

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17 July 2014	<p>Letter from National Head: DPCI to LRC disputing contents of LRC letter dated 10 July 2014 and:</p> <ul style="list-style-type: none"> • 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 Head: DPCI to LRC disputing contents of LRC letter dated 10 July 2014 (Annex TN21.21)
31 July 2014	<p>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).</p> <p>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.</p>	Minutes of meeting dated July 2014 (Annex TN21.2)
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)
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)

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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	Letter 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)
9 April 2015	Lt Col M S Mahlangu, Commander, Crimes Against the State, Directorate for Priority Crime Investigation advises that the case docket has been forwarded to the NPA for decision	Letter from the DPCI to the LRC (Annex TN41)

44. It is evident from the correspondence entered into with the first respondent that no decision has been taken to prosecute or not to prosecute the known suspects. It is also evident that no decision has

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been taken to refer my sister's case to a formal inquest. Although the police have advised that the docket has been referred to the NPA I have no faith in the NPA taking a decision timeously or at all.

Political constraints

45. I submit that the first and second respondents and their respective officials dealing with my sister's case, as well as other so-called political crimes, have been subject to certain political constraints or pressures. Such constraints and pressures have served to shape the approach or policy of the first and second respondent and their responsible officials in relation to the so-called political cases. Indeed, it is my submission that such political pressure made it extremely difficult, if not impossible, for them to carry out their responsibilities under law. This in turn rendered their conduct, in relation to my sister's case and other so-called political cases, questionable, if not unlawful. It also serves to explain the inordinate delay in finalizing the investigation of my sister's case.
46. This policy or approach is evidenced by the following steps aimed at ensuring a measure of political control over prosecutorial decisions dealing with so-called political cases arising from the past:
- 46.1. The undated 2004 secret report, titled "Report: Amnesty Task Team", which was disclosed during the proceedings in the matter

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of *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (TPD case no 32709/07), annexed hereto marked "TN42", revealed that:

- 46.1.1. The government Director-General's Forum, under the chairpersonship of the Director-General: Justice and Constitutional Development on 23 February 2004, appointed an "Amnesty Task Team" ("ATT") to consider and report on, amongst other things, a future process for the "*consideration of a process of amnesty on the basis of full disclosure of the offence committed during the conflicts of the past*".
- 46.1.2. The ATT was concerned about "*the absence of any guarantee that alleged offenders will not be prosecuted*" (Report of the task team, 3.2.4(c));
- 46.1.3. The Amnesty Task Team recommended the creation of a Departmental Task Team comprising members of the Department of Justice and Constitutional Development, the Intelligence Agencies, the South African National Defence Force, the South African Police Service, Correctional Services, the National Prosecuting Authority and the Office of the President. The functions of the proposed Task Team would be to:

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46.1.3.1. consider the advisability of the institution of criminal proceedings for an offence committed during the conflicts of the past and make recommendations to the National Director of Public Prosecutions;

46.1.3.2. consider applications received from convicted persons alleging that they had been convicted of political offences with a view to making recommendations for parole and pardon;

46.1.3.3. evaluate prosecution decisions in relation to crimes arising from conflicts of the past and make recommendations to the president in terms of a proposed "Indemnity Act" (Report of the task team, 3.2.2, R441 – R445, read with "annexure B" thereto).

46.2. Some of the ATT's report was accepted by government and implemented, as is evidenced by the 2005 amendments to the Prosecution Policy made under section 179 of the Constitution and the introduction by President Mbeki of a Special Dispensation for Political Pardons in 2007. The amendments to the Prosecution Policy incorporated certain of the recommendations of the ATT. The amendments specifically allowed for the involvement of the executive in the decision-

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making of the prosecution authorities. Paragraph 6 of Part B stated that *"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: (a) the NIA; (b) the Detective Division of the SAPS; (c) The Department of Justice; and (d) the DSO"*. In addition, the NDPP was required to inform the Minister of Justice of any decision taken (Amended policy, Part B, para 10).

47. While the amendments to the Prosecution Policy were found by the courts to be manifestly unconstitutional and unlawful, they nonetheless firmly signalled to the first and second respondents, and their officials, the approach or policy of government. This approach indicated in no uncertain terms that the so-called political crimes, regardless of how serious, were not to be treated in the same way as other serious crimes. It is submitted that few with an eye on the future would have defied the government in this regard.

48. The apparent rationale behind the government's approach was disclosed during the proceedings of the Ginwala Commission of Inquiry into the fitness of the then NDPP, Advocate. Vusumzi Patrick Pikoli ("Pikoli"), to continue in office. During May 2008 Adv. Pikoli filed an affidavit with the Ginwala Commission which in part dealt with the cases referred by the TRC to the NPA. Pikoli relayed how cabinet ministers and the then National Commissioner of Police were

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concerned that the then head of the PCLU, Adv Anton Ackermann would launch cases against ANC members. The relevant extracts of Adv. Pikoli's affidavit filed before the Ginwala Commission is annexed hereto marked "TN43". A full copy of his affidavit before the Ginwala Commission can be supplied on request. This is an unsigned copy of the final version but Adv. Pikoli confirms that this version served before the Ginwala Commission. In particular Adv. Pikoli gave an account of a meeting that took place in 2006 attended by himself and various cabinet ministers at paragraph 247 of his affidavit:

"Some time later a meeting was convened at the home of Minister Skweyiya, the Minister of Social Development. The meeting was attended by the Ministers of Safety and Security and Defence, Minister Thoko Didiza (Acting Minister of Justice and Constitutional Development representing Minister Mabandla who was indisposed) and Mr Jafta. The meeting was called by Acting Minister Didiza and I was told that it related to the prosecution in the Chikane matter. It was originally suggested that Advocate Ackermann accompany me to the meeting but I elected to go on my own in order to establish what the concerns were.

It transpired at the meeting that:

The Minister of Safety and Security was concerned about the decision to proceed with the prosecution and with Advocate Ackermann's involvement in the process and the issue of

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whether it was Advocate Ackermann or me who was behind the decision to prosecute.

The Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.

The Minister of Defence had concerns about where the decision to prosecute rested – did it rest with me or did it rest with Advocate Ackermann.

49. In his supporting affidavit (annexed hereto as **TN7**) and in his *in camera* affidavit (contained in the *in camera* record), the former NDPP, Advocate Pikoli, confirms that there was political interference that effectively barred the investigation and possible prosecution of the cases recommended for prosecution by the TRC, including my sister's case. The former head of the PCLU, Advocate Anton Ackermann SC, confirms in his supporting affidavit (annexed hereto as **TN8**), that he was effectively stopped from pursuing the TRC cases, inclusive of Nokuthula's case. Both Advocates Pikoli and Ackermann state that it was no coincidence that there has not been a single prosecution of any TRC matter since Adv. Pikoli's suspension from office and the

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removal of the TRC cases from Adv. Ackermann SC in September 2007.

50. The underlying rationale of the Government's opposition to the pursuit of the so-called political cases is disturbing. I submit that such manipulation of the criminal justice system for the purpose of protecting "cadres" from prosecution, serves an ulterior purpose, constitutes bad faith, is irrational and amounts to a subversion of the rule of law.

Public release of the Pikoli Memorandum

51. Advocate Pikoli has filed both an open court affidavit and an *in camera* affidavit. Attached to the latter affidavit is a memorandum in question is titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' dated 15 February 2007 ("the memorandum"). It was annexed to Adv. Pikoli's affidavit before the Ginwala Commission.

52. In this memorandum, which was addressed to the then Minister of Justice, Adv. Pikoli concluded that there had been improper interference in relation to the TRC cases and that he had been

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obstructed from taking them forward. He complained that such interference impinged upon his conscience and his oath of office. He indicated that he was no longer able to deal with these cases in terms of the normal legal processes and sought guidance on the way forward.

53. As Adv. Pikoli had marked this memorandum as an "*internal secret memorandum*" it is currently not attached to his open court affidavit. It is attached to an *in camera* affidavit that is annexed to the supporting affidavit of Adv. Pikoli, which will be filed separately and served only on the first and third respondents as they are already in possession of the memorandum. The Registrar of this Honourable Court will be requested not to make the *in camera* affidavit available to the public, unless this honourable Court authorizes its release.

54. I submit that it ought to be made available to the other respondents, as well as the public, for the following reasons:

54.1. The issues and complaints raised in the memorandum have already been discussed in the body of Adv. Pikoli's affidavit filed before the Ginwala Commission, which has been part of the public record since 7 May 2008, and which was also part of the court record in the matter of *Nkadimeng & Others v The National*

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Director of Public Prosecutions & Others (TPD case no 32709/07).

- 54.2. There is nothing in the memorandum that implicates or impairs national security.
- 54.3. Since the memorandum demonstrates unlawful conduct it cannot be prejudicial to the security or other interests of the Republic.
- 54.4. The disclosure of the memorandum is warranted since it reveals evidence of a substantial failure to comply with the law and the Constitution. The public interest in the disclosure of the memorandum far outweighs any contemplated harm, inconvenience or embarrassment.
- 54.5. The interests of justice demands the disclosure of the memorandum, not only to the other respondents, but also to the public at large.

LEGAL FRAMEWORK GOVERNING PROSECUTIONS AND INQUESTS

55. This section briefly sets out the relevant legal framework governing prosecutions and inquests in South Africa and seeks to determine whether a duty rested upon the NPA to take a decision in my sister's case and when such a decision should be taken.

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56. Section 179(1) of the Constitution establishes a single national prosecuting authority in the Republic. Subsection (2) provides that *"The prosecuting authority has the power to institute criminal proceedings on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings."* The relevant statute is the National Prosecuting Authority Act 32 of 1998 ("the NPA Act"), which must be read together with Chapter 1 of the Criminal Procedure Act ("the CP Act").

57. The prosecution policy issued in terms of section 179(5)(a) and (b) of the Constitution read with section 21(1) of the NPA Act must be observed in the prosecution process. The preface to the Prosecution Policy asserts, *inter alia*:

Effective and swift prosecution is essential to the maintenance of law and order within a human rights culture.

Offenders must know that they will be arrested, charged, detained where necessary, prosecuted, convicted and sentenced.

58. While emphasising the need for prosecutorial discretion in every case, the Prosecution Policy sets out the relevant considerations which should inform any decision to institute or review a prosecution or to discontinue proceeding. The Policy Directives issued in terms of s

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179(5)(b) of the Constitution and s 21(1)(b) of the NPA Act do not specifically set out any timelines or guidelines as to when decisions to prosecute or not should be taken. Part 17 does, however, note a prosecutor's obligation to ensure the accused is tried without unreasonable delay.

59. Paragraph 4(c) of the Prosecution Policy provides that once a prosecutor is satisfied that there is sufficient evidence to provide reasonable prospects of a conviction a prosecution should normally follow, unless the "public interest demands otherwise". The policy further provides that when considering whether or not it will be in the public interest to prosecute, prosecutors should consider all relevant factors, including the nature and seriousness of the offence, the interests of the victim and the broader community and the circumstances of the offender.

60. In my sister's case, the NPA has failed to take a decision whether to prosecute or not. Moreover it has failed to take a decision on whether to institute an inquest. The taking of such decisions would have addressed the rights of me and my family and commenced the process of closure. The failure to take such decisions over such prolonged period of time has destroyed whatever confidence we once had in the NPA in particular and the criminal justice system in particular.

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Inquests

61. Inquests in South Africa are governed by the Inquests Act 58 of 1959 ("the Act" or "the Inquests Act") which also governs the procedure when a death or alleged death occurs. In terms of section 4, a policeman investigating the circumstances of death or alleged death must submit a report to the public prosecutor who may call for additional information if necessary.
62. The Act provides at section 5 that *"If criminal proceedings are not instituted in connection with the death, or alleged death, the public prosecutor referred to in section 4 shall submit those statements, documents, and information submitted to him to the magistrate of the district concerned."*
63. The prosecutor who received the report from the investigating officer has essentially two options: either to institute criminal proceedings or to submit the information to the magistrate of the district. There is no time period specified for these decisions.
64. If it appears to the magistrate that the death occurred due to unnatural causes the magistrate must ensure that an inquest is held by a judicial officer in terms of section 6. According to section 16(2), the judge or magistrate must make a finding as to the identity of the deceased person, the cause or likely cause of death, the date of death and

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whether the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of any person.

65. If the judicial officer finds that the death was brought about by any act or omission *prima facie* involving or amounting to an offence on the part of the any person, the judicial official has a duty to "*cause the record of proceedings to be submitted to the attorney general.*"
66. In terms of section 17(2) of the Act the NDPP has a discretion to order the judicial officer to re-open the inquest to take further evidence or to open criminal proceedings against any person suspected of being criminally responsible for the death. The Minister may, in terms of section 17A, and also on the recommendation of the NDPP request a judge president to designate a judge of the SCA to re-open the inquest.
67. Under section 21(1) of the Act an inquest cannot take place, if a criminal prosecution has been instituted or the judicial officer has knowledge that a prosecution is to be instituted. However, as spelt out in s 21(2), an inquest does not preclude a prosecution from taking place at a later stage and the outcome of an inquest may provide information necessary to initiate a prosecution. Section 21(2) of the Inquests Act allows inquest proceedings to be stopped if criminal proceedings have been, or will be instituted.

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68. I am advised that, contrary to the repeated assertions of the first respondent, section 5 of the Act does not require that a final decision not to prosecute be made before a matter is referred to an inquest. This follows as a matter of logic and law as per the scheme of the Act.
69. Ultimately the purpose of an inquest is to promote public confidence in the administration of justice and to reassure the public that all deaths from unnatural causes will be properly investigated. Inquests are also aimed at ensuring that appropriate measures can be taken to prevent similar deaths from taking place in the future. Finally, inquests are conducted so that the perpetrators of such deaths may, as far as possible, be brought to justice.

THE DELAY IS UNREASONABLE

70. My sister disappeared more than 30 years ago and the investigation docket has been in existence for some 18 years. The docket has been with the NPA for nearly 14 years and with the PCLU for some 11 years. It was referred to Advocate Chris Macadam in the PCLU in 2010 and has been under his control for some 4 years. It appears from correspondence received from the SAPS and the NPA during 2013 that there has been little or no investigation for the bulk of all these time periods. There can be no doubt that the delays have seriously undermined the prospects not only of a successful prosecution, but also the prospects of getting to the truth and recovering of Nokuthula's

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remains.

71. While I accept that my sister's case presented some challenges for investigators I am advised that such challenges were not unduly complex; and certainly did not justify the prolonged delay in taking a prosecutorial decision or referring to an inquest. In this regard I refer this honourable court to the affidavit of Frank Dutton annexed hereto as "TN 4".
72. In this matter the first respondent points to another body, namely the SAPS, for failing to timeously perform its investigative functions. However Nokuthula's case, as with the other TRC cases, was referred to the NPA and it is the NPA that has the ultimate responsibility to take a decision and it should have taken the necessary steps in order to place itself in a position to do so within a reasonable time. After such long periods of delay neither the NPA nor the SAPS may put up systemic causes to explain their dereliction of duty.
73. It has been 18 years since the docket was opened in this matter. It may have been justifiable to have held back the investigation or decision while the TRC amnesty process was ongoing and before an amnesty finding had been made. However, more than 13 years have elapsed since the amnesty decision was handed down on 23 May 2001. The fact that this matter has been outstanding for more than three decades speaks to the gross neglect of the relevant authorities

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and the unreasonableness of the delay.

68. I submit that in the circumstances of my sister's case the matter ought to have been investigated years, if not decades ago. Similarly a prosecutorial decision or a referral to an inquest should have taken place many years ago. A prolonged and ongoing failure to take a decision, as in my sister's case, results in the *de facto* situation that criminal proceedings are not instituted, which satisfies the threshold set out in the Inquest Act.
69. A prolonged and ongoing failure to either prosecute or refer to an inquest serves to defeat the objects and underlying rationale of the power to prosecute under the Constitution, the Prosecution Policy, the Policy Directives and the power to refer to an inquest in terms of the Inquest Act.
70. Such delays reinforce the view held by me, my family and in many communities that serious crimes of the past do not receive any diligent attention from the authorities and indeed have been singled out for neglect. It also reinforces the likely views of the perpetrators that they need not fear any repercussions for crimes such as murder, so long as they have a political flavour.

GROUND'S FOR RELIEF

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71. I submit that my family and I have a right to have my sister's case referred to an inquest, alternatively to a prosecutorial decision. I submit that I furthermore have a right to one or other of such decisions within a reasonable time period. My rights are premised upon the following grounds:

- 71.1. The interests of justice and the need to prevent a grave injustice;
- 71.2. The constitutional obligation to act without delay;
- 71.3. My entitlement under the Constitution to have various rights respected, including our rights to human dignity and equality;
- 71.4. The rule of law, incorporating the principle of legality;
- 71.5. Various provisions of PAJA;
- 71.6. The special responsibility to pursue cases arising from the TRC process;
- 71.7. South Africa's international law obligations

The interests of justice

72. I am advised that the superior courts of South Africa have certain inherent powers to be exercised in the interest of the proper administration of justice. This includes when it may be necessary to act in order to prevent a grave injustice.

73. I submit that the exceptional circumstances of this case warrant the

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exercising of the Court's inherent powers to order the holding of a formal inquest before the High Court. This is because there was a clear duty of the NPA to refer this matter to an inquest in the context of an inordinate delay. This delay was the product of the wilful or negligent inaction or obstruction by the State's prosecutorial and policing authorities. The delay was compounded by the failure of the said respondents to conclude its criminal investigation despite clear evidence that the investigation was not capable of further progress.

Constitutional obligation to act without delay

74. I am advised that there is a constitutional obligation on the NPA and the SAPS to perform their duties without delay. Section 237 of the Constitution provides "*All constitutional obligations must be performed diligently and without delay.*" Both the decision to institute a prosecution and the decision to not prosecute involve the exercise of constitutional powers and therefore constitute constitutional obligations.

75. I submit that accountable governance and social trust are built upon decision making by public officials which are reasonable and responsive. The failure to afford me and my family a basic investigative process followed by a reasonable prosecutorial decision

TP 11

making process has denied us our substantive rights. These rights are set out below.

Human Dignity

76. The unreasonable delay in investigating this case and the prolonged delay in taking a prosecutorial decision; or referring the case to an inquest has violated my right to dignity. Such lapses have denied me and my family, as well as that of our wider community, the acknowledgement of our intrinsic worth as human beings.
77. The conduct of the responsible officials in the departments controlled by the first and second respondents have denied me a prosecutorial decision or an inquest within a reasonable time period. In so doing they have denied me and my family the possibility of closure of a most painful past. This conduct has breached our rights to human dignity.
78. The inordinate delay in taking steps to investigate the known suspects responsible for my sister's torture and disappearance has disrespected my family's rights as victims. The conduct of the NPA and SAPS and at times, the express statements of the NPA, indicate that the matter in this case has not been attended to with any urgency. No adequate explanation has been provided for these lapses.
79. Moreover the allegations made by the perpetrators who abducted my

TP 17

sister that she was turned and became an informant remain unsettled. Such scurrilous claims ought to be the subject of an official investigation and an official finding. The delay in making such a finding has seriously offended my human dignity and that of my family.

80. Ultimately, the prolonged delay infringes upon my right to dignity and that of my family in that it:

80.1. protects the perpetrators responsible for the kidnapping, torture and enforced disappearance of my sister at the expense of me and my family;

80.2. causes suffering to me and my family by denying us justice without undue delay;

80.3. prevents me and my family from reaching closure;

80.4. dishonours the respect, dignity and value of my family in the wider community

80.5. demeans South African society as a whole by betraying the constitutional compact made with victims as enshrined in the epilogue to the Constitution of the Republic of South Africa Act 200 of 1993 ("the Interim Constitution") and by undermining the purpose and spirit behind the TRC amnesty process.

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Right to life

81. The right to life as protected in section 11 of the Constitution is infringed as the prolonged delay has severely undermined the prospects of a successful investigation and prosecution of the perpetrators who infringed this right by committing acts of murder and enforced disappearance. The delay has also devalued the life of the disappeared person.

Right to freedom and security of the person

82. The prolonged delay violates the right to freedom and security of the person enshrined in Section 12 by undermining and retarding the investigation of perpetrators who violated the freedom and security of Nokuthula; by committing acts of torture, assault and other cruel and inhuman treatment.

Right to equality

83. The prolonged delay, and failure to take forward the so-called political cases of the past, including Nokuthula's case, violates the right to equal protection and benefit of the law enshrined in Section 9 by

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unjustifiably discriminating against the victims of this class of crimes.

Rule of law

84. The fact that serious crimes from the past, such as the kidnapping, torture and likely murder of my sister, have not been treated with any seriousness, implicates the rule of law, upheld in section 1 of the Constitution.
85. Crime, particularly serious crime, undermines the fabric of our society and violates, amongst other rights, the right to life, the right to freedom and security and the right to dignity. The State has a constitutional duty to address crime which arises from its duty to 'respect, protect, promote and fulfil the rights in the Bill of Rights'
86. Serious crime committed by agents of the State should be viewed in a particularly serious light. The perpetrators of such crime are often shielded from justice. During apartheid the perpetrators of state sponsored crime enjoyed almost total impunity. The failure of the new South African State to timeously investigate such cases, particularly those cases in which amnesty was denied or not applied for, gives rise to an appearance of political deal making or tolerance of such crimes.
87. The rule of law requires that the laws creating crimes must be obeyed; and that there cannot be favouritism exercised for the prosecution or

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non-prosecution for any breach of the law.

88. I submit that in the light of the fact that so few victims of serious crimes arising from past conflicts have seen justice done through the courts, it is essential that on those occasions when such crimes can be prosecuted, that they be pursued effectively and expeditiously.

Principle of Legality

89. I am advised that the failure by the NPA to take a decision is subject to the principle of legality. The constitutional principle of legality requires that a decision-maker exercises the powers conferred on him lawfully, rationally and in good faith. Such decisions may not be arbitrary and must be rationally related to the purpose for which the power was given.
90. I submit that the conduct of the first respondent and its officials in respect of my sister's case is not only irrational but may have been mala fides or deployed for ulterior purposes.
91. The NPA is granted the power to make decisions whether to prosecute in order to ensure that justice is done for victims, victim's families and the wider community. My sister's case was not pursued by the first respondent and his officials, notwithstanding repeated demands, requests and pleas over many years. Such conduct is not rationally

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connected to the purpose for which the prosecutorial power was granted.

92. Since 2013 further delays have been caused by the NPA's insistence that it wait for the apparent completion of all aspects of the investigation. This insistence, together with its failure to demand results from the SAPS is at odds with the aforesaid purpose. The latest delay jeopardises the possibility of a successful conviction. There can be little doubt that in these circumstances the delay is both excessive and irrational.
93. There are extremely important policy reasons for taking a decision to prosecute or not within a reasonable time. This obligation is not only inferred as part of rational decision-making but is required in terms of the NPA's own Prosecution Policy which states that the maintenance of law and order within a human rights culture requires "*effective and swift prosecution*".
94. In the circumstances the gross delay in making a prosecutorial decision constitutes an improper exercise of the NPA's discretion.
95. Aside from the irrationality of the delay it appears that such delay may be the result of conduct or decision making exercised in bad faith or for an ulterior purpose. As mentioned above under the heading "Political constraints" the State put in place measures in order to manipulate,

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control or obstruct prosecutorial decisions dealing with the political cases of the past. Aside from such measures constituting a gross encroachment on the independence of the NPA they serve to explain why the TRC cases or the political cases from the past have been treated so differently from non-political cases; and have suffered such terrible neglect.

The delay is in conflict with PAJA

96. The delay and failure to take a decision are inconsistent with the following provisions of Promotion of Administrative Justice Act 3 of 2000 (PAJA):
- 96.1. section 6 (2) (f) (ii) of PAJA in that they are not rationally related to the purpose of the first respondent's, namely the effective prosecution of crime without fear, favour or prejudice.
- 96.2. section 6 (2) (h) in that they are unreasonable, alternatively, irrational. This is so because the effect of such conduct is to assist the perpetrators to escape justice.
- 96.3. section 6 (2) (c) in that such conduct was procedurally unfair. This is so because the first and second respondents strung me and my family along over many years giving us the impression that they were doing their legally mandated jobs when they were

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not.

96.4. section 6 (2) (d) in that such conduct was materially influenced by an error of law insofar as agents of the first respondent claimed that they were obliged to suspend action on all of the so-called political cases while a standardized policy on such cases were being developed (the amendments to the Prosecution Policy issued in December 2005). In fact there was no legal authority for the suspension of such cases.

96.5. section 6 (2) (e)(ii) and (iii) in that such conduct was carried out for an ulterior purpose or motive; or because irrelevant considerations were taken into account or relevant considerations were not considered. This is so because it appears from the section titled "Political constraints" that political or irrelevant considerations interfered with the approach of the first respondent to the TRC cases resulting in their neglect or abandonment.

96.6. section 6 (2) (e)(iv) in that such conduct was carried out as a result of the unauthorised or unwarranted dictates of another person or body, in that it appears from the section titled 'Political constraints', that persons outside the NPA brought considerable pressure to bear on the first respondent and/ or officials within the NPA to treat the so-called political cases differently from other

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cases, resulting in their neglect.

96.7. section 6 (2) (e)(v) and (vi) in that such conduct was carried out in in bad faith; or arbitrarily or capriciously. This is so because it appears from the section titled 'Political constraints' that political interference in relation to the so-called political cases resulted in both the first and second respondents not treating such cases with any urgency or diligence. In so doing they acted in bad faith or capriciously.

96.8. section 6 (2)(h) in that the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function. This is so because my sister's case involves very serious crimes of kidnapping and murder; is more than 30 years old; and the first and second respondents, and/ or their responsible officials, have known since the mid-1990s who the perpetrators are. Nonetheless they saw fit to evade their legal responsibilities and only commenced with serious investigations in early 2013 when I sought the immediate holding of an inquest.

97. I am advised that section 6(2)(g) of the Promotion of Administrative Justice Act 3 of 2000 provides that the "*failure to take a decision*" as a

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specific ground of judicial review. As I have demonstrated above the first respondent has a duty to take a decision whether to prosecute or not; or refer to an inquest. Indeed whenever the NPA is in possession of a docket, particularly a docket involving a serious crimes such as kidnapping and murder, it has a duty to take a decision, as described above.

98. Although no law prescribes a period within which the first respondent is required to take such decisions I have also demonstrated that the delay has been grossly unreasonable in the circumstances, which is a further ground of review provided for in section 6(3) of PAJA.
99. I am advised that in terms of section 7 (1) of PAJA, judicial review proceedings brought in terms of section 6 (1) must be instituted within 180 days after the date upon which the person concerned "was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and reasons. I submit that the impugned action is ongoing in that the delays complained of and the failure to make decisions persist to this day. Accordingly this application complies with section 7(1).

Obligations arising from the TRC process

100. Initially, my family and I were very positive about the TRC process and

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its implications for reconciliation in South Africa. At the time, we felt that it did not matter if the perpetrators were not prosecuted, as long as they told the truth and showed remorse for what they did and helped my family to find Nokuthula's remains so that we could bury her properly.

101. As mentioned above we were disappointed with the amnesty process of the TRC. Nonetheless we assumed that the refusal of Coetzee, Pretorius, Mong's amnesty applications meant that they would be investigated for their role in Nokuthula's torture and likely murder.

102. The historic compromises that gave birth to our democracy with its enshrined freedoms required certain sacrifices, particularly on the part of victims. These sacrifices were demanded in order to advance national unity and reconciliation. Perpetrators were given an opportunity to escape justice, both criminal justice and civil liability, as long as they came clean. Victims would have to accept these outcomes. This compact was reflected in the postscript to the *Constitution of the Republic of South Africa Act 200 of 1993* ("the Interim Constitution") as well as the TRC Act. However where perpetrators offered only lies, deceit, half-truths and a wall of silence they were meant to face consequences. Accordingly, both a moral and legal obligation arose to follow up such cases. In this regard I refer to the affidavits of Alexander Lionel Borraine and Dumisa Ntesebeza filed evenly herewith.

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103. My family and I accepted the necessary and harsh compromises that had to be made in order to cross the historic bridge from apartheid to democracy. We did so on the basis that there would be a genuine follow-up of those offenders who spurned the process and those who did not qualify for amnesty. This part of South Africa's historic pledge with victims has not been kept in Nokuthula's case and indeed in most of the arising from the conflicts of the past. This failure has served to defeat the purpose behind South Africa's historic compromises and has rendered largely meaningless the entire truth for amnesty program. It has become an effective or *de facto* blanket amnesty. It stands as a betrayal of all of us who participated in good faith in the TRC process.

Violation of South Africa's international law obligations

104. The delays and failure to take a decision are substantively unconstitutional and invalid in that they constitute an infringement of the international law obligations of the Republic of South Africa, as set out in sections 231 to 233 read with section 39(b) of the Constitution, to uphold the right to justice and to investigate, prosecute and punish violations of human rights.
105. The delays and failure to take a decision violate the following international law instruments:

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- 105.1. Article 2(3), read with article 2(1), of the International Covenant for Civil and Political Rights ("ICCPR") by denying victims and their families an effective criminal justice remedy;
- 105.2. Article 6(1), of the ICCPR by permitting those who have violated the right to life to escape justice and punishment;
- 105.3. Article 7 of the ICCPR by contravening the duty to hold the perpetrators of torture or cruel, inhuman or degrading treatment or punishment responsible for their actions;
- 105.4. Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT") by failing to give effect to the requirement that all acts of torture must be punishable by appropriate penalties;
- 105.5. Article 7 of CAT by failing to give effect to the requirement that all acts of torture must be submitted to the competent authorities for the purposes of prosecution;
- 105.6. Article 12 of CAT by failing to ensure that competent authorities promptly investigate, wherever there are reasonable grounds to believe that an act of torture has been committed;

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- 105.7. Article 13 of CAT by failing to uphold the right of those who allege torture to have their cases promptly and impartially examined by competent authorities;
- 105.8. Article 14 of the Declaration on the Protection of all Persons from Enforced Disappearance (Adopted by General Assembly resolution 47/133 of 18 December 1992) by failing to bring the perpetrators behind my sister's disappearance before the competent authorities for the purpose of prosecution and trial.
- 105.9. Article 3(g) of the Constitutive Act of the African Union by failing to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights; and articles 4(m) and (o) of the said Constitutive Act by failing to reject impunity and uphold the rule of law.
- 105.10. Article 11 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/Res/60/147 (Dec. 16, 2005) by not affording me and my family "equal and effective access to justice"; as well as article 4 by not investigating my sister's case and prosecuting those responsible.

COMPELLING THE FIRST RESPONDENT

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106. I submit that I have demonstrated the unlawfulness of the delays and the ongoing failure to make a prosecutorial decision or to refer Nokuthula's case to an inquest. I have also demonstrated the serious undermining of the prospects of justice and the reaching of the truth with every day that goes by. In the circumstances I have established a clear right to the making of a prosecutorial decision in Nokuthula's case, alternatively a clear right to have her case referred to a formal inquest.
107. I submit that I have demonstrated that the delays and the failure to take the said decisions have infringed my constitutional rights and that further delay will seriously prejudice my rights and that of my family. I have accordingly established a reasonable apprehension of injury.
108. The stress and trauma that we have endured for decades will be considerably magnified by any further delays. My mother is elderly and is troubled by ill-health. Witnesses and potential accused are getting elderly and some may not live for much longer. In the circumstances, I submit that I have amply demonstrated that the balance of convenience favours me and my family and that we will suffer irreversible harm by any further delays.
109. I submit that that I have no other viable or alternative remedy. I have exhausted all avenues of persuasion. Many years of knocking on

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doors and pleading for action has fallen on deaf ears. No civil remedies can deliver the justice and the truth that my family and I seek.

SHORTENED TIME PERIODS

110. My family and I have exercised considerable patience and restraint over the last three decades. Once the docket had been opened by the SAPS, and particularly when the amnesty applications of the perpetrators had been finalized, and the matter handed over to the NPA, we expected action to be taken. We lived in hope that the next week or the next month, or failing that the next year, would yield some resolute action on the part of the authorities.
111. We did not wish to go the huge effort of launching an application to court needlessly. This is why we have waited so long. However, we cannot wait any longer. If the responsible agencies cannot or will not make a prosecutorial decision after such a long effluxion of time then we should be allowed to reach closure by being granted a formal inquest before the High Court.
112. With every day that goes by the prospects of justice or reaching the full truth and finding the remains of Nokuthula are seriously undermined. My mother is now elderly and not well. Witnesses and possible accused are also elderly and some may be approaching their last

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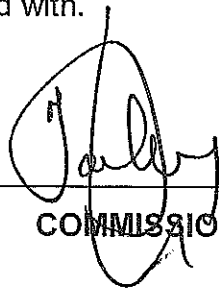
years. This ground alone justifies urgency or at least shortened time periods for the purposes of filing of papers and the hearing of this matter.

Wherefore I pray that the Honourable Court grants the relief as set out in the Notice of Motion.



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 18 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

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82 KILKENNY ROAD
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JOHANNESBURG
RSA.

ANNEXURES to NKADIMENG FOUNDING AFFIDAVIT

TN #	Description of Annexure	Paragraph(s) Cited
1	Confirmatory affidavit of Sizakele Simelane (mother)	1
2.	Confirmatory affidavit of Antonio Lungelo Simelane and	1
3	Confirmatory affidavit of Junior Mzwandile Nkosinathi Simelane	1
4	Supporting affidavit of Frank Dutton, former Chief Investigator of the Directorate of Special Operations	5,
5	Supporting affidavit of Dumisa Ntsebeza, Advocate SC, former TRC Commissioner and Investigation Unit Head	5
6	Supporting affidavit of Alexander Boraine, former Deputy Chairperson of the TRC	5
7	Supporting affidavit of Vusi Pikoli, former NDPP	5
8	Supporting affidavit of Anton Ackermann, former NDPP	5
9	TRC news release dated 24 June 1999 re: Brigadier Schoon's application for amnesty in respect of crimes committed against Simelane	34.7.1
10	Findings of the TRC Amnesty Committee (AC/2001/185) in relation to the amnesty application of the perpetrators, dated 23 May 2001 [NOTE: This document is also referred to as "TRC Amnesty Committee Finding AC/2001/185" in the Investigative Timeline.]	34.14, 34.28, Investigative Timeline
11	Sowetan newspaper report #1 re: Simelane's disappearance, dated 27 January 1995	34.19, Investigative Timeline
12	Sowetan newspaper report #2 re: Simelane's disappearance, dated 6 February 1995	34.19
13	Annexed to <i>in camera</i> founding affidavit	34.21
14	Annexed to <i>in camera</i> founding affidavit	34.21
15	Warning issued to Respondent Coetzee regarding his rights in terms of section 35 of the Constitution in respect of Simelane's murder	34.25
16	Transcript of "victims' hearing" before the Human Rights Violations Committee, dated 3 June 1997	34.26
17	Memorandum from the FHR setting out the basis for the FHR's recommendations, dated 18 August 2005	37
18	Letter received from the Chairperson of the UN Working Group on Enforced or Involuntary Disappearances, dated 24 July 2014	39
19	Applicant's opinion piece in the City Press, dated 26 December 2013	39
20	Letter from Applicant to the Acting NDPP requesting that the Simelane case be referred to a formal inquest before the High Court, dated 29 January 2013	41
21	Annexed to <i>in camera</i> founding affidavit	
22	Evidence of former Sergeant Veyi	Investigative Timeline
23	"Report for the Office of the National Director of Public Prosecutions" dated 7 March 1999.	Investigative Timeline

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TN #	Description of Annexure	Paragraph(s) Cited
24	Mention of Simelane in TRC report Volume 2, Chapter 3 para 278 - 280; 287 - 292	Investigative Timeline
25	Mention of Simelane in TRC report Volume 6, Chapter 1 para 197 - 206	Investigative Timeline
26	Mention of Simelane in TRC report, Volume 6, Chapter 2 para 50 - 71	Investigative Timeline
27	Simelane listed as disappeared in Volume 7 (extracts)	Investigative Timeline
28	Presidential Proclamation creating the PCLU	Investigative Timeline
29	About PCLU document	Investigative Timeline
30	Appendix A, National Prosecution Policy, dated 1 December 2005	Investigative Timeline
31	Letter from Legal Resource Centre (LRC) to NPA dated 31 July 2013	Investigative Timeline
32	Letter dated 5 August 2013 from LRC to Acting NDPP responding to Adv Macadam email dated 31 July	Investigative Timeline
33	Letter from LRC to the NDPP, dated 10 July 2014	Investigative Timeline
34	Letter from LRC to National Head: DPCI, dated 10 July 2014	Investigative Timeline
35	Letter from Colonel Xaba, Commander, Crimes Against the State, DPCI to LRC, dated 11 August 2014	Investigative Timeline
36	Letter from the LRC to Col Xaba dated 9 September 2014	Investigative Timeline
37	Letter from Col Xaba to the LRC dated 10 September 2014	Investigative Timeline
38	Letter from Col Xaba to the LRC dated 25 September 2014	Investigative Timeline
39	Email from Col Xaba to the LRC dated 22 October 2014	Investigative Timeline
40	Email sent from Col Xaba to the LRC and SALC dated 26 February 2015	Investigative Timeline
41	Letter from DCPI to LRC dated 9 April 2015	Investigative timeline
42	Undated 2004 secret report, titled "Report: Amnesty Task Team"	46.1
43	Relevant extracts from the affidavit of Vusumuzi Patrick Pikoli, former NDPP, before the Ginwala Commission	47

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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

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

TP

SES

LM

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned

SIZAKELE ERNESTINA SIMELANE

state under oath as follows:

1. I am Sizakele Ernestina Simelane. My identity number is 401209 0309 080. I am the mother of the late Nokuthula Aurelia Simelane ("Nokuthula"). I am also the mother of the applicant in this matter, Themblsile Phumelele Nkadameng ("Thembi").
2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. I endorse the application launched by Thembi to bring closure and finality to the case of Nokuthula. I confirm the contents of Thembi's affidavit insofar as they pertain to me and my family.

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4. Nokuthula was my first child. I gave birth to her when I was 20 years old. I am now 75 years old. Nokuthula's father and my husband, Matthew, died in 2001. He never found out what happened to our daughter. We still don't know what happened to her. We have endured daily agony since her disappearance in 1983.
5. We have not been able to bury Nokuthula's remains with the dignity and respect that she deserves. I desperately want to do this before I die. Until we can do this my family and I will have no closure.
6. We know that she was abducted and brutally tortured by the Security Branch of the former South African Police. We know that she refused to collaborate with the apartheid security forces. It is likely that she was murdered by these members. We know that it was routine practice for the Security Branch to murder their captives if they refused to collaborate and to conceal their remains in a manner that made discovery unlikely, if not impossible.
7. We have tried to find out what happened but we do not have answers. I do not know why the responsible Security Branch officers have cruelly refused to disclose the whereabouts of her last resting place. Their obstinate refusal has caused my family and I to suffer indescribable pain for more than 30 years. They should be required to face the consequences, not only for their crimes, but also for their willful and malicious withholding of the truth.
8. We expected that with liberation a new post-apartheid government would stand with us to search for the truth and to hold the perpetrators accountable. We were wrong. Rather than standing with the victims, successive post-apartheid governments have gone out of their way to accommodate the perpetrators and shield them from justice.

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9. Our pleas since the mid- 1990s for a proper investigation have fallen on deaf ears. Our queries over the years have simply been deflected with promises of action which have never materialized.
10. When we realized by the beginning of 2013 that the authorities had no intention to seriously pursuing justice in the case of Nokuthula we sought a formal inquest. The prosecutors had the temerity to decline this request on the claim that they were still investigating. In mid-2015 they are apparently still investigating. We have no faith in the SAPS and the NPA. We do not believe that they are acting in the interests of justice in Nokuthula's case.
11. We feel betrayed. Nokuthula was betrayed by one of her own cadres. The TRC's Amnesty Committee granted the white security officers amnesty for kidnapping even though they had found that these same individuals had been untruthful about what they did to her during her captivity, and that they had made the false claim that Nokuthula was cooperating with them. The Amnesty Committee nonetheless granted amnesty to the white officers for kidnapping and in so doing violated the full disclosure principle. We regarded this as an inexplicable betrayal. We then expected the various post-apartheid governments to pursue justice in Nokuthula's case. They turned their backs on us. Prosecutors even refused to investigate those police officers who did not apply for amnesty for the kidnapping of Nokuthula. This included the Commander of Security Branch C1 Section, former Brigadier Willem Schoon, who authorised the crimes committed against Nokuthula.
12. I have suffered emotionally, psychologically and physically as a result of my daughter's disappearance. This suffering has been heightened by the duplicitous conduct of the police and prosecutors who ought to have upheld the rule of law, but, acting at the behest of politicians, deliberately blocked Nokuthula's case from going forward, as well as other cases from the past. I suffer from a chronic back ache,

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which is caused by nervous tension. The quality of my health has deteriorated immensely. I have suffered pain that is impossible to quantify.

Sizakele Ernestinah Simelane

SIZAKELE ERNESTINAH SIMELANE

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 Bethal on this the 9th 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.

Loyiso Mchwa

COMMISSIONER OF OATHS

LOYISO MCHWA - MAHLANGU
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"TN2"

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

**NATIONAL DIRECTOR OF
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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

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A.L

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT OF ANTONIO LUNGELO SIMELANE

I, the undersigned

ANTONIO LUNGELO SIMELANE

state under oath as follows:

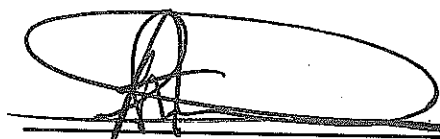
1. I am Antonio Lungelo Simelane. My identity number is 610915 5760 088. I am the brother of the late Nokuthula Aurelia Simelane ("Nokuthula"). I am also the brother of the applicant in this matter, Thembisile Phumelele Nkadimeng ("Thembi").
2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. I endorse the application launched by Thembi to bring closure and finality to the case of Nokuthula. I confirm the contents of Thembi's affidavit and the supporting affidavit of my mother, Sizakele Ernestina Simelane, insofar as they pertain to me and my family.

TP (P)



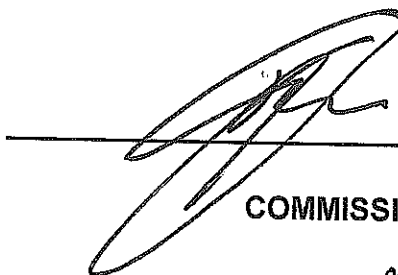
A.L

4. I suffered mentally and emotionally as well as physically as a result of the ongoing disappearance of my sister, Nokuthula. My doctor has diagnosed me with anxiety and depression. I am now on medication for chronic depression. My doctor has also diagnosed me with high blood pressure and diabetes.
5. I am the eldest son in my family. Since my father's death in 2001, I have felt more pressure to be a leader for my family which is difficult in these circumstances. I was admitted to hospital from 30 January to 03 February 2011 for stress related reasons, which resulted largely from the vandalizing of my sister's statue in Bethal. I was admitted to the hospital again from 07 March to 11 March 2011. I am still on medication.
6. Much of my stress derives from the pain of my family.



ANTONIO LUNGELO SIMELANE

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 Ermelo 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

DANIEL OLIVIER
COMMISSIONER OF OATHS
DEPUTY SHERIFF FOR THE
HIGH COURT ERMELO
c/o Church and Joubert Str
P.O. Box 41, Ermelo, 2350
Tel: 017 619 7542

TP 17

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

TP 1

JMN L.M

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT OF JUNIOR MZWANDILE NKOSINATHI SIMELANE

I, the undersigned

JUNIOR MZWANDILE NKOSINATHI SIMELANE

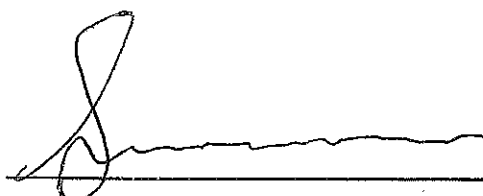
state under oath as follows:

1. I am Junior Mswandile Nkosingathi Simelane. My identity number is 700531 5323 081. I am the brother of the late Nokuthula Aurelia Simelane ("Nokuthula"). I am also the brother of the applicant in this matter, Thembisile Phumelele Nkadingeng ("Thembi").
2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.

TP 9

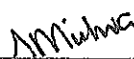
JMN LM

3. I endorse the application launched by Thembi to bring closure and finality to the case of Nokuthula. I confirm the contents of Thembi's affidavit and the supporting affidavit of my mother, Sizakele Ernestina Simelane, insofar as they pertain to me and my family.
4. I was thirteen years old when I lost my sister. I suffered a lot of pressure emotionally when we lost Nokuthula. I loved her so much. I could not accept that I was not going to see her any more. I still need answers. Life was never the same without her. It will never be the same again.



JUNIOR MSWANDILE NKOSINATHI SIMELANE

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 *Bethal* on this the *9th* 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

LOYISO MDITWA - MAHLANGU
 Kommissars van Ede / Commissioner of Oaths
 Praktiserende Prokureur / Practising Attorney
 R.S.A.
 36 Louis Trichardstraat / Street
 Unit 4 Ground Floor Belmont Villas Building
 NELSPRUIT 1200

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

1 114
"TN 4"

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

Third Respondent

THE NATIONAL MINISTER OF POLICE

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Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent



MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

TP 1

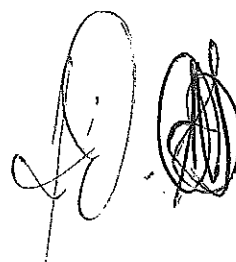
AFFIDAVIT

I, the undersigned

FRANK KENNAN DUTTON

do hereby make oath and state:

1. I am a South African citizen with ID Number 4905204085086. 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 (also known as the Scorpions).

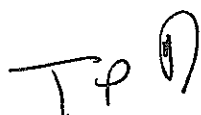
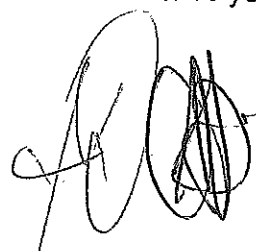


TP 87

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. The citation to this award is as follows:

Frank Kennan Dutton: THE ORDER OF BAOBAB IN GOLD. Awarded for his exceptional contribution to and achievement in his investigative work as a dedicated and loyal policeman, for exposing the apartheid government's "Third Force"; for his role in working for peace in KwaZulu-Natal; his international work in investigating and exposing war crimes and crimes against humanity in Bosnia, Kosovo and Darfur; and assisting in establishing the causes of violence in East Timor and Sudan.

4. The purpose of this affidavit is to assess the investigation into the kidnapping and murder of Nokuthula Aurelia Simelane, ("Nokuthula"). Nokuthula was abducted, tortured and enforceable disappeared by the South African Security Branch ("SB") of the former South African Police ("SAP") in 1983.
5. I conclude that there is no justification for the long delay in finalizing this investigation. I also conclude that there is no acceptable reason why a prosecutorial decision should not have been made in relation to the known suspects. Failing such a decision the matter ought to have been referred to a judicial inquest.
6. In my view, if the investigative and prosecutorial authorities had acted with reasonable diligence, such decisions could have been made more than 10 years ago, if not earlier.

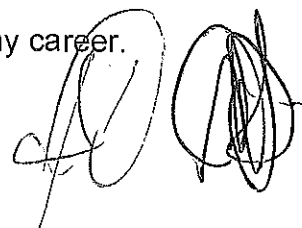


7. My outline of my own investigation and my assessment of the police investigation is not exhaustive. Moreover, I have excluded several details that would not be in the interests of justice to include at this stage.
8. In this affidavit I set out:
 - 8.1. My experience and expertise;
 - 8.2. An outline of my private investigation;
 - 8.3. My insight into the police investigation;
 - 8.4. My conclusions on the criminal investigation conducted by the police;
 - 8.5. The versions of the white and black Security Branch officers;
 - 8.6. Various investigative issues; and
 - 8.7. My conclusions on the delay.

EXPERIENCE AND EXPERTISE

9. My experience and expertise is as follows:
 - 9.1. I joined the South African Police on 1 August 1966. After undergoing a year's police training in Pretoria, I was posted to KwaZulu-Natal where I performed general policing duties at Greenwood Park, Glendale and Tongaat police stations.
 - 9.2. Whilst serving at Tongaat in 1971 I was appointed as a detective. Since then I have worked as a detective/investigator for the rest of my career.

TP



- 9.3. I was transferred to Pinetown Detective Branch in 1979 and held the rank of Detective Warrant Officer.
- 9.4. In 1983 I was promoted to a Commissioned Officer. I was appointed as the Head of the Durban West Field Unit. This Unit was responsible for investigating serious violence related cases.
- 9.5. Political violence escalated in KZN from the mid-1980s and in consequence the unit which I headed investigated many cases of political violence. Hundreds of political violence cases were investigated under my command. Some of these cases exposed the hidden hand of the then South African government and its security forces in instigating and fuelling political violence.
- 9.6. The most prominent of these investigations was the murder investigation and conviction of Samuel Jamile (the former Deputy Minister of Interior for the KwaZulu Government); and the Trust Feed case in which South African Police Captain Brian Mitchell and several KwaZulu police officers were convicted on thirteen counts of murder. The attempts by generals and other senior officers within the South African Police to cover up this crime were exposed in this case.
- 9.7. In an address to the OAU Ad Hoc Committee for Southern Africa on 28 April 1992 in Arusha, Tanzania, President Nelson Mandela highlighted Trust

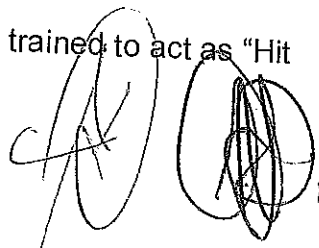
TP 11

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Feed case and the contribution that this case had made towards the successful negotiations for a democratic South Africa.

- 9.8. In 1992 I was appointed to head the KwaZulu-Natal investigation team of the Goldstone Commission. This led to, among other things, the exposure of the workings of the SAP Security Branch's activities under the command of former Colonel Eugene de Kock at Vlakplaas and the role and association of the South African Police top command structure in intimidation, bombings and the murder of political opponents.
- 9.9. In March 1994, after the Goldstone Commission had published its report on "State Sponsored Violence" implicating senior government Cabinet Ministers and the Command structure of the South African Security Forces I was appointed to serve on a Special Investigation Team headed by the then Attorney General of the Transvaal, Dr D'Oliviera. This Team was charged with conducting criminal investigations into the issues raised by the Goldstone Commission's report. I assisted in debriefing witnesses in Denmark and obtaining comprehensive affidavits from them. This resulted in the arrest of Eugene de Kock and others.
- 9.10. In August 1994, I was appointed by the Minister of Safety and Security, Sydney Mufamadi, to establish and command the Investigation Task Unit (ITU) to investigate hit squads within the KwaZulu Police. This investigation led to the exposure of a secret Military Intelligence Operation (Code named Operation Marion) in which 200 young Zulu men were trained to act as "Hit

TP 9

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Squads". This in turn led to the prosecution (and acquittal) of the former Minister of Defence, General Magnus Malan, and former senior military officials for the murder of 13 people in the 1987 Kwa Makhutha massacre. During this period I was promoted to the rank of Colonel.

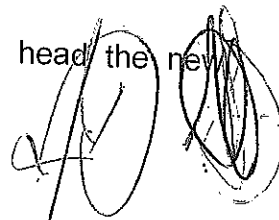
9.11. In 1996 President Nelson Mandela seconded me to the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY), where I assisted in the ICTY's investigations into genocide, war crimes and crimes against humanity in Bosnia and Croatia. At the end of 1997 I was appointed to head the ICTY Office in Sarajevo where I facilitated all ICTY investigations (including the exhumations of mass graves) in Bosnia.

9.12. In 1998 I was promoted to the rank of Commander (a P5 position) and commanded all field investigations in Albania, Bosnia, Croatia, Kosovo, Macedonia, and Serbia.

9.13. Early in 1999 I facilitated the initial field investigations into the forced evictions of Albanians from Kosovo by the Serb Security Forces. To achieve this I established Investigation Units in Tirana, Albania and Skopje, Macedonia. I headed these initial investigations. These investigations resulted in indictments being issued against President Milosevic and other senior officials for crimes against humanity.

9.14. I returned to South Africa in December 1999 after being recalled by the South African Government and was appointed as a Director General within the Department of Justice and tasked to establish and head the new

TP 9

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Directorate of Special Operations (also known as the "Scorpions") a specialised investigative unit. I remained in this position until my retirement from the South African Government Service in April 2004 after 38 years of service.

9.15. Since my retirement I have worked both internationally and locally as a policing expert and private investigator.

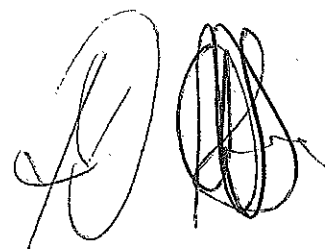
9.16. The work that I have done for the past ten years is summarised below:

9.16.1. I was selected by a United Nations Security Council appointed Commission of Inquiry to investigate and assist the Commission in determining the causes of violence in Darfur during 2004/2005.

9.16.2. I was appointed in 2005 by UN Mission in the DRC (MONUC) to investigate incidents of sexual abuse against women.

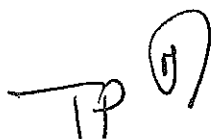
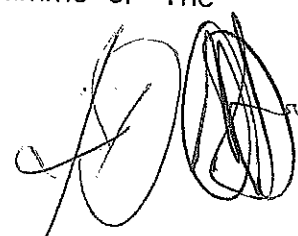
9.16.3. I investigated incidents of violence for a Security Council appointed Panel of Experts for Sudan in 2005/2006.

9.16.4. On behalf of the UN Development Program (UNDP) I investigated the cause of an explosion in the living quarters of UN staff members in Afghanistan during 2006.



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- 9.16.5. I headed an Investigation Team for a Commission of Inquiry appointed by the United Nations General Assembly to determine the causes of violence in East Timor during 2006.
- 9.16.6. I investigated and recovered missing SAM 6 missiles in Afghanistan during 2007 on behalf of UNDP.
- 9.16.7. I was selected to serve on a South African panel to review the evidence against South African Police National Commissioner, Jackie Selebi during 2007 and to make a recommendation to the Director of National Prosecutions in respect of prosecution.
- 9.16.8. I conducted an investigation on behalf of the World Bank into procurement irregularities in the awarding of a multi-billion US\$ hydro-electric power contract in the DRC. The contract was shown to be corrupt and was subsequently withdrawn.
- 9.16.9. I conducted investigations on behalf of UNDP into incidents of serious staff corruption in South Africa, Mozambique, Brazil, Liberia, Cameroon, Ghana, Ethiopia and Zimbabwe at various times between 2006 and 2011.
- 9.16.10. Working from Geneva I conducted an investigation into embezzlement of funds from the malaria programme of "The



Global Funds" in Kyrgyzstan, India and various African countries in 2009 and 2010.

9.16.11. In September 2011 I was appointed by United Nations Office on Drugs and Crime (UNODC) to conduct an assessment on the Seychelles Police Service.

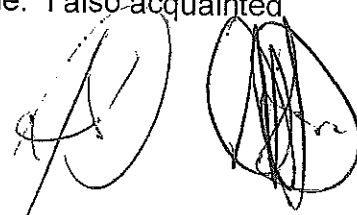
9.16.12. In January 2012 I was appointed by the Seychelles Government and tasked to re-structure the Seychelles Police Service to bring about a reduction in spiralling national crime. Over a two year period these efforts resulted in a 30% decrease of serious crime in the country; and a significant increase in police productivity.

PRIVATE INVESTIGATION

10. 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).

11. 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 studied the testimonies before the Amnesty Committee of the TRC in respect of the abduction and assault of Ms Simelane. I also acquainted

TP 17



myself with the Truth & Reconciliation Commission (TRC) Report and the TRC findings concerning the Security Branch of the South African Police.

12. I noted the contents of the Amnesty Committee's decision regarding the amnesty applications in respect of Ms Simelane.

13. From the aforementioned information I was able to establish the following:

13.1. For 13 years following her kidnapping in 1983 Ms Simelane was just another "missing person". Her family was left bewildered and traumatised by her sudden and unexplained disappearance. This is despite the fact that the circumstances of her disappearance were officially known to South African Police and Security Branch senior HQ management as well as to police officers within these organisations. No effort was made to communicate this knowledge to the family of Ms Simelane nor was an investigation launched into her kidnapping and disappearance.

13.2. The crimes against Ms Simelane were eventually exposed in 1996 after an appeal for information was published in the City Press. This appeal prompted one of the complicit black SB members, Nimrod Veyi, to come forward and disclose the truth about her disappearance, torture and suspicion of her murder.

13.3. Those who perpetrated crimes against Ms Simelane were given an opportunity of seeking amnesty from the Truth and Reconciliation

TP 9

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Commission in terms of the Promotion of National Unity and Reconciliation Act.

13.4. No one applied for amnesty in respect of her murder.

13.5. The Security Branch members that sought amnesty for her abduction (kidnapping) were granted amnesty for this crime. They are:

13.5.1. W H Coetzee 1st Applicant (TRC Applicant Reference AM4122/96),

13.5.2. A Pretorius 2nd Applicant (TRC Applicant Reference AM4389/96),

13.5.3. J F Williams 3rd Applicant (TRC Applicant Reference AM4375/96),

13.5.4. J E Ross 4th Applicant (TRC Applicant Reference AM4377/96),

13.5.5. F B Mong 5th Applicant (TRC Applicant Reference AM4154/96),

13.5.6. N L Mkhonza 6th Applicant (TRC Applicant Reference AM5420/97),^s

13.5.7. M M Veyi 7th Applicant (TRC Applicant Reference AM5421/97),

13.5.8. M L Selamolela 8th Applicant (TRC Applicant Reference AM5419/97).

13.6. In respect of the assault (torture) of Ms. Simelane two black Security Branch members were granted amnesty for her assault after satisfying the amnesty committee that they had made full and truthful disclosures. They are:

13.6.1. M M Veyi,

13.6.2. M L Selamolela.

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13.7. The three white Security Branch members who applied for amnesty in respect of the assault (torture) of Ms Simelane were refused amnesty as it was found that they had not made full and truthful submissions. They are:

13.7.1. W H Coetzee,

13.7.2. A Pretorius,

13.7.3. F B Mong.

13.8. An aggravating factor to these serious crimes is that the perpetrators were serving South African Police members. Moreover senior South African Police commanders at HQ level authorised and were complicit in the crimes. All the complicit police members had a legal and moral obligation to uphold the law and to protect and serve all the people of South Africa.

13.9. By 1983 South Africa had enacted particularly harsh security legislation which allowed for detention without trial and the holding of political activists in solitary confinement. Notwithstanding the draconian powers at their disposal, the perpetrators of the crimes against this young woman choose to hold her captive on an isolated farm under primitive conditions depriving her even of the meagre protection that would have been afforded to her had she been detained under existing Security Legislation.

13.10. Following Ms Simelane's captivity and torture she disappeared. Now, more than 30 years later, and in the absence of any other explanation it can only be concluded that she is deceased.

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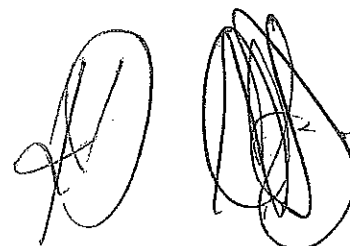
13.11. Some 18 years after these dramatic disclosures in 1996, and after the matter going through an initial South African Police investigation; the TRC process and numerous appeals to the authorities for this case to be concluded, the authorities have refused to act against the perpetrators or to bring the death of Nokuthula Simelane to legal finality through an inquest.

13.12. There is still a small window of opportunity to remedy matters and bring about some legal finality to the death of Ms Simelane. There is however no time for further delays as evidence is constantly being eroded or destroyed by the passage of time.

Insight into Police Investigation

14. After completing my investigation into the whereabouts of Ms Simelane early in 2012, I was retained by the legal representatives of the Simelane family to provide advice and assistance relevant to my experience and my investigation.
15. In order to perform this function I was provided with *inter alia* correspondence between the family's legal representatives, the NPA and SAPS as well as other relevant documents.
16. My insight into the police investigation is based on this correspondence as well as meetings with:

TP 17



16.1. Advocate Macadam the head of Priority Crimes Litigation Unit (PCLU) of the National Prosecuting Authority on 22 July 2011.

16.2. Colonel Xaba (Director) and Captain Masegela (Investigating Officer) both of the South African Police Service, Directorate for Priority Crime Investigation (Hawks) on 3 July 2014.

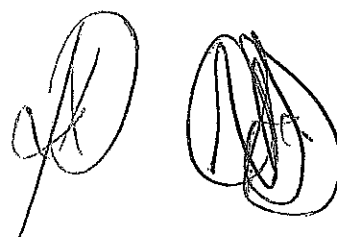
During both these meetings the status of the investigation was discussed. I do not know what additional investigation has been done since 31 July 2014 - except that I was required to provide an affidavit to the Investigating Officer in which I outlined the inquiries that I had previously done in this case. I should mention that at the meeting with Colonel Xaba and Captain Masegela on 31 July 2014 both officers said that they were satisfied that their police investigation had been completed and that the case file had been forwarded to the NPA for attention. They pointed out that further investigative instructions may be issued by NPA in respect of this investigation.

CONCLUSIONS ON THE CRIMINAL INVESTIGATION

17. In my opinion the authorities have consistently failed to act. Eighteen years since the revelations by Nimrod Veyi and the opening of an investigation docket, the authorities have still not completed some of the most basic investigations. The prolonged lapse of time has severely undermined the prospects of justice, and indeed meaningful closure for the family.

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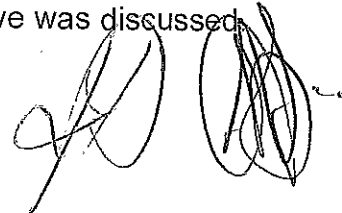
18. In my opinion the kidnapping, torture and disappearance is not an complex criminal investigation. The issues are relatively straight forward. A complicating factor is the protracted time delay in undertaking and completing these investigations. This is compounded by every passing day. This difficulty is however the product of the authority's' own neglect in failing to attend to this matter expeditiously.
19. In my entire career spanning 48 years (during which time I have dealt with hundreds of unnatural deaths - resulting in either prosecutions or inquests) I have never experienced a case that has been subjected to the delays that this matter has.
20. It is my experience that if investigations cannot for some reason be concluded within a reasonable period an inquest is held on the available evidence. This is particularly so when the police or other authorities contributed to the death. The inquest finding can be very specific in some cases. Alternatively, if there is little or no supporting evidence it is not unusual for an inquest court to conclude that on available evidence a finding cannot be made in respect of the cause of an unnatural death. The holding of an inquest and the inquest finding has never, in my experience, prevented investigations from continuing, and if warranted prosecutions may follow an inquest.



FACTS WHICH ARE COMMON CAUSE

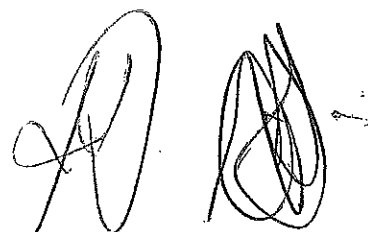
21. In 1983 Ms Simelane was a young, woman who had just completed a degree at the University of Swaziland. She was acting as a courier for Umkhonto we Sizwe (MK). She was betrayed by infiltrated agents in the MK structures in Swaziland. At a rendezvous in September 1983 she met with a Security Branch agent at the Carlton Centre Johannesburg. She mistakenly believed him to be an operational MK cadre. She was lured to the basement of the Centre where she was overpowered by several Security Branch members and kidnapped. Ms Simelane was manhandled, placed in the boot of a police vehicle and transported to Norwood Security Branch Flats where the Security Branch had an operational office in the cleaner's quarters on the roof of the building. She was held, interrogated and tortured in this office for several days.
22. Coetzee and Williams testified before the Amnesty Committee of the TRC stating that after their kidnapping of Ms Simelane they met with Brigadier Muller (deceased), who headed the Soweto Security Branch, and reported their action to him. They also sought permission to continue their illegal detention of Ms Simelane in order to turn her into an operative for the police (referred to in police circles as a "kopdraai"). Following Security Branch protocols, Brigadier Muller referred this request to Security Branch HQ for approval.
23. Accordingly, Brigadier Muller, accompanied by Coetzee and Williams, met with Brigadier Schoon in Pretoria on the same day. Brigadier Schoon was the Head of the Security Branch Counter Terrorist Section (C1). The proposal of holding Ms Simelane illegally to forcibly turn her into a police operative was discussed.

TP 9



Brigadier Schoon then approved the kidnapping and gave authority for the illegal action to proceed further.

24. Williams apparently played no further role in this matter. He applied for and was granted amnesty for his role in the abduction (kidnapping) of Ms Simelane.
25. Ms Simelane was subsequently transferred to a remote bushveld farm in the district of Northam in the present North West Province. Here she was kept captive under primitive and extremely adverse conditions for a period of approximately 4 to 5 weeks in a store room without privacy, ablution, medical or kitchen facilities. The interrogation and torture resumed on the farm.
26. She was completely outnumbered by the members of the Security Branch and was forced at all times to share the store room in which she was confined with her captors (who accommodated themselves in the same room) they were all male and physically superior to her. She was dressed in the same brown police overall which she was given to wear and was manacled for the four or five weeks that she was held at this farm. Her legs were permanently cuffed with leg-irons while her hand-cuffs were removed on occasion during the day for short periods.
27. Both the interrogation and the assaults were led by the white officers, particularly Willem Coetzee who was in overall command of the group.



TP ①

28. Her graduation ceremony was on 30 October 1983 which she did not attend because of her unlawful captivity and likely murder.

VERSION OF BLACK SECURITY BRANCH MEMBERS

29. According to the black Security Branch officers, Veyi, and Selamolela, Ms Simelane was interrogated and severely assaulted throughout the period of her detention. Towards the end of her stay on the farm, her physical condition had deteriorated to such an extent that she could hardly be recognised. Her wrists and ankles had sustained severe abrasions from the cuffs. She had great difficulty in walking and her physical condition had deteriorated badly. She was, according to Selamolela also subjected to torture by electric shocks. She was, moreover, repeatedly dunked into the farm dam. No first aid, medication, toiletries or similar personal items were furnished to Ms Simelane during her detention on the farm.
30. Ms Simelane never co-operated with her captors neither did she furnish any material information concerning MK as alleged by Coetzee and the other white officers. She persisted with this stance throughout. There was never any question of her being recruited as an agent of the Security Branch. It was because of her refusal to cooperate with the police that she was severely assaulted throughout her unlawful detention.
31. The black officers disputed the version of Coetzee and the other white officers that the information furnished by Ms Simelane led to 'false flag' attacks on

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Government installations or was instrumental in the arrest of 18 persons linked to MK.

32. According to Veyi he last saw Ms Simelane lying in the boot of Coetzee's vehicle near Westonaria severely injured and cuffed.
33. Veyi testified that there was a discussion between himself and Sergeant Mothiba (deceased) in which Mothiba allegedly reported that their Commanders, Coetzee and Pretorius, were involved in the subsequent killing of Ms Simelane and the burial of her body.
34. Veyi alleged that he subsequently inquired from Pretorius as to what had happened to Ms Simelane. He was told *"don't ask a lot of questions"*. Mkhonza said he asked Coetzee what had happened to Ms Simelane and he too was told not to ask questions. According to Veyi, Selamolela and Mkhonza, Ms Simelane was never again a topic of discussion within their Unit.
35. Veyi, Selamolela and Mkhonza say they were never informed at any subsequent time that Ms Simelane was at large or that she was a wanted person. Nor were they required to be on lookout for her. They were never tasked to gather information or intelligence about her despite the fact that their function was gathering intelligence from sources.

**VERSION OF WHITE SECURITY BRANCH MEMBERS (COETZEE, PRETORIUS
AND MONG)**

36. According to the white Security Branch members, Coetzee, Pretorius and Mong, the assaults and torture occurred only during the course of the first week of Ms Simelane's detention. Thereafter it was effectively terminated apart from the odd occasion when she would be given a slap or a punch in order to secure her continued co-operation. During the period of her stay on the farm, Ms Simelane's personal needs such as toiletries, food, clothing and the like were attended to.
37. It is claimed that after the first week of detention, Ms Simelane agreed to work as an agent of the Security Branch. She allegedly gave her full co-operation to Coetzee, the leader of the group of police officers. Because she was concerned about her safety, Ms Simelane apparently requested Coetzee not to let the black officers in the group know that she was in fact working with them.
38. They claimed that Ms Simelane furnished information concerning the structures and operations of MK in Swaziland. They further claimed that in order to ensure Ms Simelane's continued credibility with the ANC and MK, certain government installations were attacked by the Security Branch under false flag operations. These attacks formed part of the orders which Ms Simelane had to convey to MK units inside South Africa. MK would apparently have become suspicious of Ms Simelane if these attacks had not been launched; which in turn would have compromised the continued operations of the Security Branch agents who had infiltrated MK. They alleged that Ms Simelane's recruitment

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occurred over a period of time and was finalised approximately two weeks prior to her departure from the farm. She was allegedly registered as an occasional source of the Soweto Security Branch to be handled by Coetzee and Pretorius.

39. After the necessary arrangements were made, steps were allegedly taken to return Ms Simelane to Swaziland. Only Coetzee, Pretorius, the late Sergeant Mothiba and a black Security Branch member Frank Langa (also deceased) were apparently involved in the arrangements concerning the handling of Ms Simelane as a Security Branch source. It is claimed that the deceased members, Mothiba and Langa, eventually transported Ms Simelane to Swaziland and released her there. The white officers alleged that she subsequently failed to keep the pre-arranged appointments with her Security Branch handlers and was never heard from again. They claimed that she must have been exposed as a Security Branch agent and was probably executed by MK.

40. The white Security Branch members denied that Ms Simelane's torture continued beyond her first week of detention or that she was so badly assaulted over the prolonged period of her detention or that she was hardly recognisable towards the end of her stay on the farm – they claimed that all injuries were completely healed by the time she was released. They likewise denied that electric shocks were administered to Ms Simelane during her detention on the farm or that her torture included her being thrown into the dam on the farm. They furthermore strenuously denied that Ms Simelane was killed by the Security Branch and her body disposed of after she was taken from the farm.

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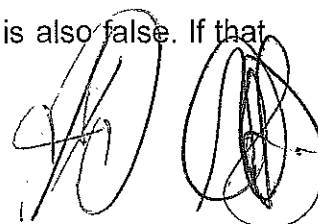
INVESTIGATIVE ISSUES

41. I set out hereunder a non-exhaustive list of investigative tasks that ought to have been completed within several months following the opening of the docket in 1996 or after the TRC process had been completed in 2001.
42. The credibility of each version ought to have been properly and promptly tested through investigation. The result of this work would have allowed the Director of National Prosecutions to make a decision on whether to prosecute or alternatively to hold an inquest into the death of Ms Simelane.
43. There are three central questions which ought to have been thoroughly investigated many years ago. These are:
- 43.1. Did Ms Simelane cooperate with the Security Branch?
 - 43.2. What was the nature of her injuries, if any, at the time of alleged release?
 - 43.3. Did she return to Swaziland?

Did Ms Simelane cooperate with the Security Branch?

44. The truth of what became of Ms Simelane hinges on the issue of her alleged cooperation.
45. If Ms Simelane cooperated with the white Security Branch members then their version could reasonably be true. On the other hand, if the 'cooperation' was a fabrication, then their version of her release into Swaziland is also false. If that

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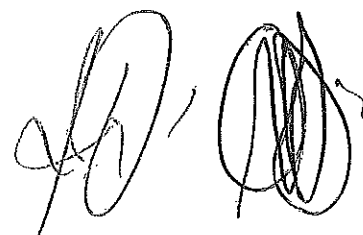


is the case, such falsification constitutes a cover-up for what actually happened to Ms Simelane, namely that the Security Branch caused the death of Ms Simelane.

False Flag Operations

46. The white Security Branch members claim that they conducted false flag operations by causing explosions at certain key points in the Johannesburg area to demonstrate that the instructions that Ms Simelane carried as a courier were being carried out, thereby maintaining her credibility with the ANC.
47. The black Security Branch members disputed that the false flag operations in question were associated with Ms Simelane, but rather designed to give credibility to an unconnected Security Branch undercover agent.
48. During the amnesty hearing it became apparent that the false flag attacks referred to limpet mine attacks on electrical sub-stations in Randburg and Sandton on 8 September 1983; and at sub-stations at Bryanston-North and Fairland on 11 September 1983. It therefore seems that the false flag attacks claimed by the white Security Branch occurred before or coincided with Ms Simelane's kidnapping which the Amnesty Committee found occurred on 11 September 1983. These attacks could therefore not have been as a result of cooperation by Ms Simelane – especially as the white members also claimed that Ms Simelane only started cooperating with them a week or two after her capture.

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49. It was of critical importance to establish the exact dates of these false flag attacks through official records to confirm whether these attacks could possibly be attributed to information provided by Ms Simelane. However this was only identified as an investigative task in a letter from Advocate Macadam of NPA, Deputy Director of Prosecutions and Deputy Head of Priority Crimes Litigation Unit (PCLU) to Captain Masegela, Directorate for Priority Crimes Investigation (DPCI) dated 27 October 2010.

Other leads arising from the Amnesty Hearing

50. Coetzee and Pretorius testified that during Ms Simelane's detention she provided information which enabled the Security Branch to:

50.1. arrest an ANC cadre whilst she was still in confinement at the farm at Northam and;

50.2. following her captivity to take action against 17 other MK operatives as well as the Sasol MK sabotage group

51. It does not seem that these lines of investigation to determine the veracity of these claims have been followed up. My own investigations have revealed that the action taken against the Sasol group could not have been linked in any way to the alleged cooperation of Ms. Simelane.

Information which could have been revealed by Ms Simelane

52. If Ms Simelane cooperated with the Security Branch as alleged, she ought to have disclosed secret information about MK of which she was aware. My investigations have revealed that no specific operatives or safe houses of which she had actual knowledge were compromised.

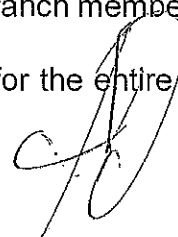

What was the nature of her injuries?

53. The white police members, Coetzee, Pretorius and Mong, claimed that at the time of Ms Simelane's release she was injury free. Earlier injuries had healed and were no longer visible. This was disputed by the black police members, Veyi and Selamolela, who claimed that she had endured prolonged and sustained assaults and that Ms Simelane's physical condition deteriorated to the extent that she was hardly recognisable and could barely walk.
54. The Truth and Reconciliation Commission's Amnesty Committee that heard the amnesty applications in respect of Ms Simelane made the following finding:

Due to the prolonged and sustained assaults, Ms Simelane's physical condition deteriorated to the extent that she was hardly recognisable and could barely walk.

55. The black police members said that this state of affairs precluded any possibility of releasing Ms Simelane to infiltrate MK in Swaziland.
56. It is common cause between the white and black Security Branch members that Ms Simelane had been restrained with leg and hand cuffs for the entire period

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of about four to five weeks of her captivity. The leg cuffs restrained her continually and were never removed; whilst the hand cuffs were removed for short periods during the day. She was fully shackled at all other times including when she slept. According to Coetzee and other white members the shackles were finally removed at the moment of her actual release from the farm.

57. The black Security Branch members asserted that, amongst other serious injuries caused by the ongoing assaults, Ms Simelane had sustained severe and painful abrasion injuries to her wrists and ankles from the continual wearing of cuffs.
58. Medical forensic evidence should have been sought to give an expert opinion on the injuries that leg and hand cuffs are likely to have caused to a person restrained in this way for a period of about four to five weeks. Such expert evidence should also have set out the healing periods for the different injuries alleged by both the white and black police members.
59. As far as I am aware this line of investigation has not been pursued by the DPCI nor has it been identified as an Investigation task by PCLU.

Was Ms Simelane returned to Swaziland as a Security Branch agent?

60. The white Security Branch members claim that Ms Simelane cooperated with them and agreed to work as a Security Branch agent within MK structures in Swaziland. They claimed that as a result of this alleged agreement they returned her to Swaziland.

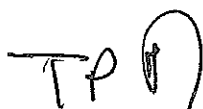
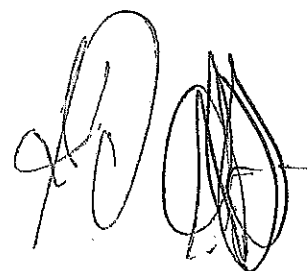
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61. The two black Security Branch members who apparently returned Ms Simelane to Swaziland are both deceased. They died before the Amnesty Committee Hearing took place. This version can therefore not be verified.
62. However, central to the version of the white officers, Coetzee, Pretorius and Mong, is the physical state of Ms Simelane at the time of her alleged release. As Mr Mong explained during his amnesty hearing, should she have borne injuries this would obviously have made her re-infiltration into the ANC in Swaziland as a Security Branch agent unworkable as it would have been obvious that she had fallen into police hands. Injuries to Ms Simelane would have rendered her re-infiltration futile.

Relatives, Friends and Acquaintances

63. Extensive investigations should have been conducted to determine whether relatives, friends, fellow students and comrades had seen or had contact with Ms Simelane post September 1983 (or post Swaziland University Graduation ceremony of October 1983).
64. My investigations revealed that none of her family members, closest friends and colleagues, including cadres in the underground, had seen or had any contact with her following her kidnapping. They all maintained that Ms Simelane had not returned to Swaziland or been seen again after her disappearance early in September 1983.

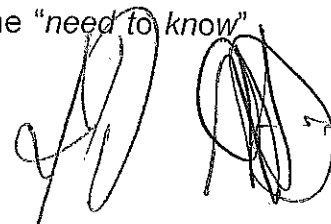


Was Ms Simelane listed as Wanted?

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65. Coetzee's and Pretorius's version is that after Ms Simelane's release back into Swaziland, she failed to keep pre-arranged appointments with her Security Branch handlers, and was not seen or heard from again.
66. All the Security Branch members, both black and white, regarded Ms Simelane as a potentially dangerous person. The white members explained to the Amnesty Committee that this was the reason why Ms Simelane was at all times restrained during her captivity. They maintained that if she should have escaped they and others would have been in imminent danger. They also felt that as a trained terrorist she posed a serious threat to the State.
67. When Ms Simelane failed to keep her appointments with her Security Branch handlers the most logical assumption by the Security Branch ought to have been that she had reneged on her agreement and returned to the ranks of MK. In order for the white police version to be regarded as credible they ought to have circulated her details as "wanted". Furthermore they ought to have taken measures to gather intelligence to determine her whereabouts and to secure her re-arrest.
68. The black Security Branch members, Mkhonza and Veyi, asserted that when they asked their Commanders Coetzee and Pretorius respectively what had happened to Ms Simelane they were told not to ask too many questions. Both Coetzee and Pretorius claimed during their testimony before the Amnesty Committee of the TRC that they had said this because of the "need to know"

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Handwritten signatures and initials, including a large stylized 'A' and a signature that appears to be 'Veyi'.

security rule. Furthermore the Security Branch members Coetzee, Pretorius, Veyi, Selamolela and Mkhonza all agreed that Ms Simelane was never again a topic of discussion at their Unit.

69. To the best of my knowledge the determining whether or not Ms Simelane had ever been posted as "wanted" has not been investigated by the DPCI, nor was this identified as an investigation task by PCLU.

Exhumations and Human Remains

70. Finding the mortal remains of Ms Simelane would be a defining moment of the investigation. It would enable not only closure for the family but would also facilitate the search for the truth. It is obviously important that the search for her remains continue.
71. One must however be realistic about this possibility. After some 30 years it is highly unlikely that her remains will be found, unless the perpetrators point them out. Moreover, it is known through admissions made to the TRC that the Security Branch disposed of their victims' bodies in ways that left little or no traces.
72. The authorities have claimed this line of investigation as one of the reasons for the ongoing delay. This has been done on the basis of the flimsiest leads.
73. In my experience, a requirement for a successful exhumation long after death, is knowledge of the precise location of the site of the grave. Searching areas of

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open land or plots of land for unmarked graves is extremely unlikely to lead to a successful exhumation.

74. The examination of human remains and possible exhumations should continue. However this search should be realistic and not delay the taking of the relevant decisions.

75. The finalization of this investigation has been delayed for protracted periods whilst the police pursued pointless leads. For instance, they investigated the skeletal remains of a woman that had no reasonable nexus to Ms Simelane. Further delays have been occasioned by the feasibility of conducting exhumations at different locations in the absence of any reliable information or evidence of the presence of a grave at these sites.

CONCLUSIONS

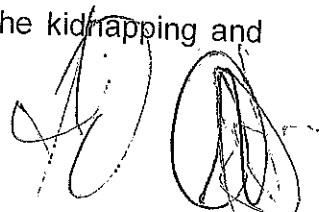
76. In the light of the aforementioned I draw the following conclusions.

Kidnapping Prosecutions

77. At the time of Ms Simelane's disappearance Brigadier Willem Frederick Schoon was the HQ Commander of Section C (the section charged with combatting terrorism) of the Security Branch.

78. The Special Intelligence Unit, Soweto under Willem Coetzee's command had sought and received authority from Brigadier Schoon for the kidnapping and

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torture of Ms Simelane for the purpose of "*turning her*". This is apparent from the evidence of the white Security Branch members before the Amnesty Committee.

79. It is noted that Brigadier Schoon applied for amnesty in respect of the Ms Simelane matter, but never proceeded with his application.

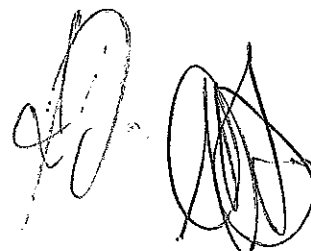
80. According to the evidence of the Security Branch members who kidnapped and tortured Ms Simelane - one of their accomplices was Constable Msebenzi Timothy Radebe. He did not apply for amnesty.

81. Both Brigadier Schoon and Constable Radebe are liable for prosecution in respect of the crimes committed against Ms Simelane. Since this information was available from the time of the hearing of the Amnesty Committee there can be no good reason why Schoon and Radebe should not have been charged with kidnapping shortly after the final amnesty hearing in June 2000.

Possible Murder Prosecution

82. Willem Schoon, Willem Coetzee, Anton Pretorius and Frederick Mong are suspects in the torture and murder of Ms Simelane. They should either have been charged with murder, amongst other crimes, or they should have been required to appear before a judicial inquest in order to explain their conduct and have their versions properly tested.

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83. The failure to take such action more than 30 years after the disappearance of Ms Simelane is inexcusable.

Conclusions on the delay

84. There were several potential starting points for the investigation into the kidnapping, assault and murder of Ms. Simelane. These include:

84.1. When the authorities kidnapped Ms Simelane and concealed the truth of what had transpired in September 1983, some 32 years ago.

84.2. From 1996 when Nimrod Veyi made his disclosures about Ms Simelane's kidnapping and disappearance, and an investigation docket was opened in February 1996, some 19 years ago.

84.3. From February 2001 when the Amnesty Committee handed down its decision and it was clear that:

84.3.1. The White Security Branch officers were refused amnesty for the serious assault (torture) of Ms Simelane;

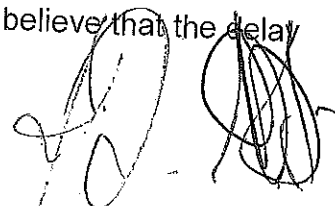
84.3.2. Brigadier Schoon and Constable Radebe had not applied for amnesty and could be prosecuted on *inter alia* charges of kidnapping.

84.3.3. It is reasonable to suspect that Ms Simelane was murdered by Coetzee, Pretorius and other Security Branch members who were complicit in the murder and/ or cover up, including Brigadier Willem Schoon.

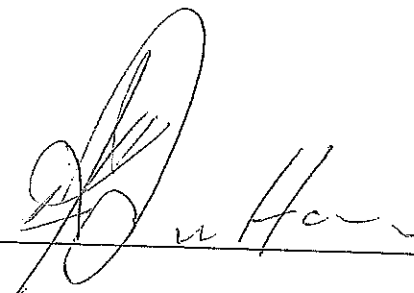
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- 84.4. From 2003 when the PCLU was formed and was given the Simelane matter together with several other cases for immediate investigation, some 14 years ago.
- 84.5. From 25 March 2010 when the matter was taken up for investigation as per the letter of Advocate Macadam of NPA, Deputy Director of Prosecutions and Deputy Head of Priority Crimes Litigation Unit (PCLU) to Senior Superintendent Bester, Directorate for Priority Crimes Investigation (DPCI), four years and eight months ago.
- 84.6. From 27 October 2010 when specific investigation tasks were directed to be done in a letter from Advocate Macadam of NPA, Deputy Director of Prosecutions and Deputy Head of Priority Crimes Litigation Unit (PCLU) to Captain Masegela, Directorate for Priority Crimes Investigation (DPCI), four years and three months ago.
85. Irrespective of when one considers the commencement of the investigation to have started, the delay has been protracted.
86. The authorities (as at 31 July 2014) had still not completed some of the most basic aspects of the investigation. No acceptable explanation has been provided for the inactivity of the relevant authorities.
87. In my view the prolonged delay is not a product of mere neglect. The family had raised its plight in the media over many years and had made numerous representations to the authorities. In the circumstances I believe that the delay

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can only have been the result of a wilful decision not to see justice done in this matter.



F K DUTTON


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 Kloof SAP on this the 08th day of

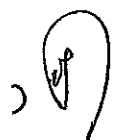
April 2015
~~September 2014~~ the regulations contained in Government Notice No R1258 of 21

July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
2015 -04- 08
PINETOWN
KWAZULU-NATAL

 711162-0
DLADLANO R O

COMMISSIONER OF OATHS



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

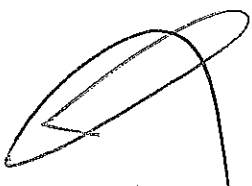
THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

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ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned,

DUMISA BUHLE NTSEBEZA

state under oath as follows:

- 1 I am an adult male senior counsel at the Johannesburg Bar. I was formerly a Commissioner and Head of the Investigation Unit of the Truth and Reconciliation Commission ("TRC" or "the Commission") constituted in terms of the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the Act" or "the TRC Act").
- 2 I have practiced law for more than 30 years. I was admitted as an attorney in 1984, practicing in the Eastern Cape, mainly in the area of human rights. I

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represented a number of political prisoners throughout the 1980s and early 1990s. Between 1993 and 1996 I taught law at the University of the Transkei (now the Walter Sisulu University). I was called to the Bar in 2000 and took Silk in 2005. I have been an acting judge in three divisions of the High Court of South Africa, as well as the Labour Court.

- 3 In 2004 I was appointed by the Secretary-General of the United Nations as a member of the International Commission of Inquiry on Darfur, which was established pursuant to a UN Security Council Resolution passed under Chapter VII of the United Nations Charter to investigate violations of international humanitarian law and human rights law in Darfur.
- 4 I am a founder of South African National Association of Democratic Lawyers and served as its President. I also served as president of South Africa's Black Lawyers Association. I am a member of the Judicial Service Commission (JSC) and a visiting professor of Political Science and Law at the University of Connecticut in the United States. I am the Chairman of the Desmond Tutu Peace Trust, which is in the process of being wound up. I am also a former trustee of the Nelson Mandela Foundation.
- 5 The facts contained in this affidavit are within my own personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief, both true and correct.

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INTRODUCTION

- 6 This application seeks to, among other things, compel the National Prosecuting Authority ("the NPA") to establish an inquest in the case of Nokuthula Simelane, who was abducted, tortured and forcibly disappeared by members of the Security Branch of the former South African Police ("SAP") in 1983.
- 7 I have read the founding affidavit of Thembisile Phumelele Nkadameng deposed to in this matter. I confirm that I agree with the submissions and views contained therein as they relate to the TRC and South Africa's transition.

INVESTIGATION BY THE TRC

- 8 I confirm that the case of Nokuthula Simelane was investigated by the TRC as part of the amnesty matter with case number: AC/2001/185.
- 9 This case was also considered as part of the TRC's inquiries into abductions, interrogations and killings (TRC Final Report: Volume 2, Chapter 3, Subsection 31). It was also considered in relation to the TRC's investigations into the Soweto Intelligence Unit, which was a key component of the Soweto

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Security Branch of the former SAPS (TRC Final Report: Volume 6, Section 3, Chapter 1, Subsection 19).

- 10 The TRC found Nokuthula to be a victim. Her name appears on the TRC's list of disappeared and missing persons with the registration: "JB00280/01MPWES" (TRC Final Report: Volume 6, Section 4, Chapter 1, Subsection 21). I confirm further that Nokuthula's case was one of the cases that the TRC recommended that the NPA investigate further with a view to prosecution.

CONCLUSION

- 11 I have frequently gone on record stating that there has been a shameful lack of political will to deal with the issues of reparations and accountability for the apartheid-era victims of gross human rights violations. I fully endorse Archbishop Desmond Tutu's statement made in 2013 that the failure to prosecute those who failed to apply for amnesty undermined those who did. I also endorse his statement that the tardy and limited payments of reparations to victims of human rights violations eroded the very dignity that the commission sought to build.
- 12 Nokuthula's story is rooted in South Africa's bitter and divided past. She paid the ultimate price for her uncompromising resistance to apartheid. Nokuthula

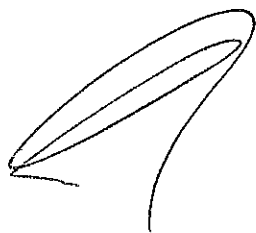
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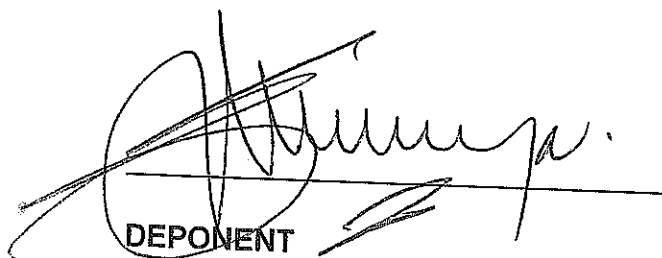
was not however cut down on the battlefield while in the line of fire. She was abducted by all-powerful State forces meant to uphold law and order, and then brutally tortured and forcibly disappeared. Her sacrifice helped to lay the basis for South Africa's democracy with its enshrined freedoms.


- 13 Nokuthula's family, notwithstanding their own pain and suffering, embraced the Constitutional compact which ushered in South Africa's new democratic order. They did so on the basis that:
- 13.1 Where the perpetrators were not truthful about their roles, and where feasible, there would be justice in the cases of their loved ones. This has not occurred in Nokuthula's case and indeed not in most of the TRC cases.
- 13.2 Where the full truth was provided, they would accept that the perpetrators were entitled to amnesty. However, instead of the full truth, the white security branch perpetrators chose to give the survivors of their victims little more than half truths. The senior officers who masterminded the operation and gave the order for her elimination have remained silent.
- 14 Nokuthula Simelane's family still do not know where her remains are. The lies and deceit of Simelane's killers have denied the family the basic human right of laying her remains to rest with the respect and dignity that she deserves.

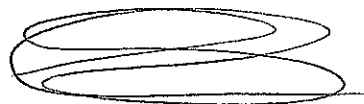
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- 15 More than 30 years after the atrocities that forever changed the lives of Nokuthula's family, they continue to be denied truth, justice and closure. Even if a prosecution or inquest does eventually take place, the many years of delay have severely compromised the interests of justice. This is, in my view, unforgiveable. The shameful political machinations that effectively stopped this investigation and others, are contemptuous of the sacrifices made for the liberation of South Africa.
- 16 I accordingly endorse this application, and respectfully urge this honourable court to grant the order in the terms set out in the notice of motion.


DEPONENT

Thus signed and affirmed at  on this 13th day of May 2015, the deponent having acknowledged that s/he knows and understands the contents of this affidavit, having affirmed that the contents hereof are true and correct and that s/he considers the affirmation binding on his / her conscience.



COMMISSIONER OF OATHS

SIMPIWE CLIFFORD NJOKWENI
Commissioner of Oaths
Practising Attorney
Republic of South Africa
4th Floor, The Forum
2 Maude Street, Sandown

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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

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

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AWB

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT OF ALEXANDER LIONEL BORAINÉ

I, the undersigned,

ALEXANDER LIONEL BORAINÉ

state under oath as follows:

- 1 I am an adult male. I am currently retired. I was formerly the Deputy-Chairperson of the Truth and Reconciliation Commission ("TRC" or "the Commission") constituted in terms of the Promotion of National Unity and Reconciliation Act 34 of 1995 ("the Act" or "the TRC Act").
- 2 I founded the International Center for Transitional Justice (ICTJ) and served as its first president. The ICTJ assists governments and civil society in the

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construction and implementation of transitional justice programs in many countries around the world. A significant part of its work is based on South Africa's experience of the TRC, which is of great interest to governments and people around the world.

- 3 From 1998 to 2001, I served as professor of law at New York University and as director of the New York University Law School's Justice in Transition Program. From 1986 to 1995 I headed two South African non-profit organizations concerned with ending apartheid and addressing its legacy. I was a member of the South African Parliament from 1974 to 1986, and served as president of the Methodist Church of Southern Africa from 1970 to 1972, having been ordained as a Methodist Minister in 1956.
- 4 I hold degrees from Rhodes University in South Africa, Oxford University in England, and Drew University in the United States, as well as seven honorary doctorates from universities around the world. I was a Global Visiting Professor of Law at the New York University School of Law's Hauser Global Law School Program.
- 5 The facts contained in this affidavit are within my own personal knowledge, unless the contrary appears from the context, and are to the best of my knowledge and belief, both true and correct.

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INTRODUCTION

6 This application seeks to, among other things, compel the National Prosecuting Authority ("the NPA") to establish an inquest in the case of Nokuthula Simelane, who was abducted, tortured and forcibly disappeared by members of the Security Branch of the former South African Police ("SAP") in 1983.

7 I have read the founding affidavit of Thembisile Phumelele Nkadameng deposed to in this matter. I confirm that I agree with the submissions and views contained therein as they relate to the TRC and South Africa's transition.

8 The scheme of this affidavit necessitates me dealing with –

8.1 aspects of the TRC report;

8.2 the constitutional compact with victims;

8.3 concluding remarks.

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THE TRC REPORT

9 The TRC was obliged in terms of section 4(e) of the Act to prepare a comprehensive report setting out its activities and findings based on factual and objective information and evidence collected or received by it or placed at its disposal. On 29 October 1998, and in compliance with section 4(e) of the TRC Act, a report styled as the Truth and Reconciliation Commission of South African Report ("the TRC Report") was handed to President Nelson Mandela. The TRC Report was subsequently tabled in Parliament in accordance with section 44 of the TRC Act. The TRC Report comprises five volumes of approximately 2250 pages. A substantial portion of Volume 5 deals with victims of gross violations of human rights.

10 In its Final Report released on 21 March 2003 the Commission stressed that the amnesty provision should not be seen as promoting impunity; and highlighted the imperative of "a bold prosecution policy" in those cases where amnesty has not been applied for in order to avoid any suggestion of impunity or of South Africa contravening its obligations in terms of international law. In Volume 6, Section 5, Chapter 1 at paragraph 24 we stated that:

"it has always been understood that, where amnesty has not been applied for, it is incumbent on the present state to have a bold prosecution policy in order to avoid any suggestion of

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impunity or of contravening its obligations in terms of international law."

- 11 In Volume 5 of the Report at paragraph 14 we specifically called for the investigation and prosecution of those perpetrators who had refused to apply for amnesty.
- 12 At Volume 6, Section 5, Chapter 4 at paragraph 94 the Commission called upon the State and in particular the National Prosecuting Authority to investigate unsolved disappearance cases.
- 13 I have noted with despair that the South African Police Service (SAPS) and the NPA have done very little to pursue those cases in which amnesty was denied or not applied for. In fact their performance must be described as abysmal. In my considered view, this can only have been the result of a concerted decision or policy to abandon these cases. The evidence put up in this application supports this view.

A CONSTITUTIONAL COMPACT WITH VICTIMS

- 14 There is nothing in the constitutional and statutory design of the TRC process which contemplated the extension of the rights of perpetrators to amnesty or indemnity from prosecution. Indeed it was specifically envisaged that criminal

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investigations and where appropriate, prosecutions, would take place where perpetrators were refused amnesty or had failed to apply for amnesty. This lay at the heart of the compact struck with victims.

- 15 An examination of the postscript to the *Constitution of the Republic of South Africa Act 200 of 1993* ("the Interim Constitution") reveals no direct or inferred suggestion that the TRC process would open the door to further opportunities for perpetrators to escape justice outside of the TRC's amnesty's provisions. The postscript reflected the outcome of a negotiated settlement between the former conflicting parties. In order to achieve the objectives of national unity and reconciliation there would be no pursuit of victor's justice, but neither would there be a blanket amnesty for perpetrators. The postscript accordingly contemplated the establishment of mechanisms, criteria and procedures, all regulated by law, through which amnesty would be dealt with:

"NATIONAL UNITY AND RECONCILIATION

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex.

The pursuit of national unity, the well-being of all South African

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citizens and peace require reconciliation between the people of South Africa and the reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.

Nkosi Sikelel' i Afrika. God seën Suid-Afrika.

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Morena boloka sechaba sa heso. May God bless our country.

Mudzimu fhatutshedza Afrika. Hosi katekisa Afrika."

- 16 Such a far reaching programme required a severe limitation of the fundamental rights of the victims of human rights violations. This was justified in the postscript by the pressing need to promote national unity and reconciliation and to cross the historic bridge between the past of a deeply divided society to a future founded on democracy and peaceful co-existence. The conditional amnesty was authorised for the specific objective of facilitating a peaceful transition towards a democratic order.
- 17 The principles set out in the postscript were reflected in the design of the legislation. Perpetrators who were granted amnesty received amnesty or immunity from criminal prosecution and immunity from civil law actions. Victims in these matters were unable to proceed with claims for compensation against amnestied individuals or against organisations that may have been vicariously liable for the actions of such perpetrators. Victims who were registered as victims in terms of the Act were however entitled to reparations as approved by Parliament. Conversely, those perpetrators who were refused amnesty or who chose not to approach the TRC faced both criminal prosecutions by the State and civil law claims brought by victims.

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- 18 South Africa's truth and reconciliation design as encapsulated in the postscript to the Interim Constitution and the Act required the sacrifice of the fundamental rights of victims in order to advance national unity and reconciliation. In so doing the State entered into a compact with victims. This compact required the State to take all reasonable steps to prosecute deserving cases in respect of offenders who were not amnestied. It is with great sadness that I must note that the State has done little to meet its obligations to victims in terms of this compact.
- 19 Most victims accepted the necessary and harsh compromises that had to be made in order to cross the historic bridge from apartheid to democracy. They did so on the basis that there would be a genuine follow-up of those offenders who spurned the process and those who did not qualify for amnesty. This part of South Africa's historic pledge with victims has not been kept.
- 20 The Interim Constitution specifically authorised the suspension of justice and the rule of law in order to build a constitutional democracy. These measures were specifically intended to apply in the transitional period. They were never intended to roll over indefinitely. The TRC was intended to have a limited life in order to complete its constitutional mandate. The limitation of fundamental rights as permitted by the TRC Act was to be confined to the transitional period from the violent past to the democratic future. That democratic future is the current South Africa. The "historic bridge" has been crossed. Today,

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South Africa enjoys one of the most respected and stable democracies in the world. It cannot be said that prosecuting those who declined to participate in the TRC process will threaten our democracy.

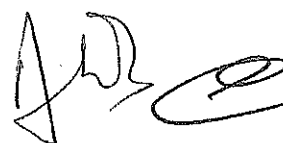
- 21 Measures taken to limit justice in present times are not taken to ensure the survival of our constitutional democracy but rather for the sake of expedience. The barter of the rule of law for expedience is not acceptable. Indeed, such a barter is manifestly offensive to the values upon which the new South African democratic state is founded, namely human dignity, equality, the advancement of human rights, the supremacy of the constitution and the rule of law.

THE FAILURE TO INVESTIGATE AND FINALIZE THE TRC CASES

- 22 The failure and/ or extended delay in investigating and resolving the enforced disappearance of Nokuthula has caused unimaginable pain to her family. In addition, the interference with the work of the NPA and the abandonment of the TRC cases has:

- 22.1 Seriously eroded the human rights culture established by the Constitution;

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- 22.2 Undermined the recommendation by the TRC that the NPA should prosecute those who failed to apply for amnesty or who were refused amnesty;
- 22.3 Interfered with the ability of the NDA to uphold and protect the Constitution and the fundamental rights entrenched therein;
- 22.4 Violated the fundamental rights of victims of apartheid-era crime;
- 22.5 Allowed perpetrators to escape justice and accountability without any obligation to publicly acknowledge their wrongdoing and perform community service or reparation.
- 23 It seems to me that the government has gone out of its way to afford perpetrators every last avenue to escape justice and accountability. Given that Apartheid era offenders were afforded a special and generous dispensation during the life of the TRC to apply for amnesty and escape criminal sanction, it is not acceptable that those from this group who chose to spurn the TRC process; and those who were denied amnesty, are now afforded further avenues to escape justice.

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CONCLUSION

- 24 The failure or refusal of the authorities to attend to Nokuthula's case timeously represents a terrible betrayal of Nokuthula herself. It is a betrayal of what she struggled and died for.
- 25 The abandonment of the TRC cases also represents a betrayal of all those who participated in good faith in the TRC process. It completely undermines the very basis of the South African TRC amnesty process which required that those who spurned the process and those denied amnesty would face the consequences.
- 26 The gross neglect of the TRC cases is a betrayal of victims who have been waiting for the prosecutions of those who failed to apply for amnesty or who were denied amnesty. The failure of the State to act against perpetrators of the past has added considerably to the trauma of victims. Allowing perpetrators to escape all justice and accountability adds insult to their injuries.
- 27 The abandonment of the TRC cases is a betrayal of those perpetrators who came forward in good faith to apply for amnesty during the operation of the TRC. Above all, it stands as a betrayal of all South Africans who embraced

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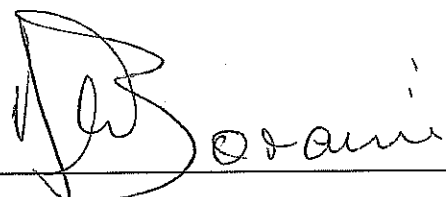


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the spirit of truth and reconciliation in order to move beyond the bitterness of the past.


28 The interference with the work of the NPA on the TRC cases is deeply offensive to the rule of law and is wholly inconsistent with the spirit and purpose of South Africa's constitutional and statutory design in dealing with crimes of the past.

29 I accordingly endorse this application, and respectfully urge this honourable court to grant the order in the terms set out in the notice of motion.



DEPONENT

Thus signed and affirmed at *Constandia Place* on this *27.8.*
day of *Nov* 2015, the deponent having acknowledged that s/he
knows and understands the contents of this affidavit, having affirmed that the
contents hereof are true and correct and that s/he considers the affirmation
binding on his / her conscience.



COMMISSIONER OF OATHS

MICHAEL ALTMANN
COMMISSIONER OF OATHS
MANAGER: OLD AGE HOME/VILLAGE
CAPE PENINSULA ORGANISATION FOR THE AGE

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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

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And

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Fourth Respondent

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Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

TP 17

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WILLEM SCHOON

Ninth Respondent

SUPPORTING AFFIDAVIT

I, the undersigned

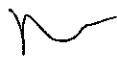
VUSUMZI PATRICK PIKOLI

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.
2. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.
3. I depose to this affidavit at the request of the applicant's legal representatives and in order to ensure that all the relevant facts are placed before this Court.

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PROFESSIONAL EXPERIENCE

4. Prior to 1990 I was a member of Umkhonto weSizwe and I worked for the ANC's legal and constitutional affairs department in exile.
5. Between 1991 and 1994 I worked as a legal adviser with the Munich Reinsurance Company of Africa Limited Group. From 1994 until 1997 I was the Special Advisor to the then Minister of Justice, Mr. Abdullah Omar. My specific mandate was to help restructure the Department of Justice. At the time, there were eleven departments countrywide and I was tasked with amalgamating those departments into one central department.
6. From 1997 to 1999, I served as Deputy-Director General of the Department of Justice. In 1999, I was appointed Director General of the Department of Justice and Constitutional Development and worked in that role until 2005.
7. On 1 February 2005, I was appointed the National Director of Public Prosecutions ("NDPP") by the President in terms of Section 10 of the National Prosecuting Authority Act 32 of 1998 ("NPA Act") as read with Section 179 of the Constitution. My appointment was for a 10 year term as contemplated in Section 12(1) of the NPA Act.
8. As a result of my decision to authorize the prosecution of a former commissioner of police on corruption charges I was suspended from duty

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by the then President, Mr. T. Mbeki on 23 September 2007. I also have reason to believe that my decision to pursue prosecutions of apartheid-era perpetrators who had not applied for amnesty or had been denied amnesty by the Truth and Reconciliation Commission ("TRC") contributed to the decision of President Mbeki to suspend me. The President suspended me from office in terms of section 12(6) of the NPA Act and ordered an Enquiry into my fitness to hold office as the NDPP.

9. During 2008, a commission of enquiry into my fitness to hold office, led Dr. F. Ginwala, found that the Government had failed to substantiate the reasons for my suspension and that I was a fit and proper person to hold the position of National Director of Public Prosecutions. She further recommended that I be restored to the office of the NDPP. Notwithstanding this finding and recommendation, acting President Mr. K. M. M. Nkomo dismissed me from my post. In 2009 I obtained an order from the High Court restraining President Zuma from appointing a successor to my position. Later that year I accepted a monetary out-of-court settlement from the government.
10. Between 2010 and 2012 I was a partner at Sizwe Ntsaluba Gobodo and the director of its Forensic Investigations department.
11. Between 2012 and 2014 I served as a commissioner of the Khayelitsha

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Commission, which investigated allegations of police inefficiency in Khayelitsha as well as allegations of a breakdown in relations between the community of Khayelitsha and the Police. In December 2014 I was appointed as the Western Cape's first police ombudsman.

12. I am a former trustee of the Constitutional Court Trust, a former member of the Magistrate's Commission and a founding member of the International Association of Anti-Corruption Authorities. I am currently an independent director on the board of Cricket South Africa, where I chair the social and ethics committee. Amongst my awards, I was conferred the International Association of Prosecutors Award in 2008.

CONFIRMATION

13. I confirm the contents of the founding affidavit of Thembisile Phumelele Nkadimeng ("the applicant") and the supporting affidavit of Anton Ackermann SC ("Ackermann"), insofar as they relate to me.
14. In particular, I confirm the contents of the applicant's affidavit under the heading "Political constraints". I confirm that there was political interference that effectively barred or delayed the investigation and possible prosecution of the cases recommended for prosecution by the TRC, including the kidnapping, assault and murder of Nokuthula Aurelia Simelane, ("Nokuthula") in the case: Priority Investigation: JV Plein: 1469/02/1996

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("the TRC cases").

15. In this affidavit I set out evidence that reflects such political interference. I also set out the serious impact that such interference had on the pursuit of the TRC cases by the National Prosecuting Authority (NPA).

THE INDEPENDENCE OF THE NPA

16. The Office of the NDPP was created on 1 August 1998 in terms of section 179 (1) of the Constitution. The NDPP is the head of the NPA, and manages the directors of public prosecutions, investigating directors, special directors, and other members of the prosecuting authority either appointed or assigned. During my tenure I was duty bound to carry out the responsibilities set out in the NPA Act as well as the Constitution of the Republic of South Africa.
17. As NDPP I strongly believed in the independence of the NPA. I maintained that prosecutors were required to conduct themselves independently, objectively and professionally in making decisions whether to prosecute or not. This view is underscored by section 179(4) of the Constitution and section 32 of the National Prosecuting Authority Act 32 of 1998 ("the NPA Act") which both impose a duty on prosecutors to act "*without fear, favour or prejudice*". These provisions provide both a constitutional and statutory guarantee of independence to the NPA.

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THE TRC CASES

18. In April 2003 President Mbeki received the final TRC report. The President announced in Parliament that the prosecution of persons who did not take part in the TRC process was to be left in the hands of the NPA as part of the "*normal legal processes*". He also said that those perpetrators who were prepared to unearth the truth would be welcome to enter into agreements that are standard in the normal execution of justice and the prosecuting mandate, and are accommodated in existing legislation. Former President Mbeki's statement to the national houses of Parliament dated 15 April 2003 is annexed hereto marked "VPP1". Regrettably what was to follow in relation to the TRC cases was anything but the "*normal legal processes*."
19. In my former capacity as Director General ("DG") of the Department of Justice and Constitutional Development ("DoJ") I had previously been involved in the formulation of a policy to deal with the TRC cases, which were regarded as politically sensitive. On 23 February 2004, I had chaired a Director-General's Forum which appointed a Task Team to report on a mechanism to give effect to the President's objectives.

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20. It is important to note that the recommendation of the Task Team of a two stage process which would have required a recommendation from an inter-departmental task team before the NDPP could institute any criminal proceedings in the political cases was rejected. This was because such a process would have been a violation of prosecutorial independence enshrined in Section 179 of the Constitution.
21. Some of these developments have been highlighted in the extracts from my affidavit filed before the Ginwala Commission in May 2008, which have been annexed to the founding affidavit. For the sake of completeness I highlight some of these facts in this affidavit.
22. In relation to the steps taken by the NPA with regard to the TRC cases prior to my appointment as NDPP on 1 February 2005 I refer to the affidavit of Anton Ackermann SC filed evenly herewith. On my appointment as NDPP, the Priority Crimes Litigation Unit (PCLU), a sub-unit within the NPA, had already been tasked with handling the TRC cases. The PCLU was headed by Special Director Advocate Anton Ackermann.
23. The decision to prosecute those implicated in the attempted murder, through poisoning, of former church leader and head of the South African Council of Churches, the Reverend Frank Chikane, on 23 April 1989 at the then Jan Smuts Airport, Kempton Park ("the Chikane matter"), saw the

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unravelling of the attempts by the NPA to hold apartheid-era perpetrators accountable for their crimes.

24. The initial decision to prosecute three Security Branch members, former Colonel C L Smith, and former Captains G J L H Otto and H J Van Staden, was taken prior to my appointment as NDPP. This decision was taken in November 2004 by Dr. Silas Ramaite SC in his capacity as Acting National Director of Public Prosecutions. However, he instructed that this matter, and all other TRC cases, be held over pending the development of the guidelines to deal with the TRC cases that were to be incorporated into the Prosecution Policy.

Developments since 2005

25. Following the approval by the Minister of Justice, and after consultation with the Directors of Public Prosecutions as required by the NPA Act, the amendments to the Prosecution Policy were tabled in Parliament and became effective on 1 December 2005. The amendments to the Prosecution Policy were titled: *"PROSECUTING POLICY AND DIRECTIVES RELATING TO THE PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST AND WHICH WERE COMMITTED ON OR BEFORE 11 MAY 1994"* ("the Prosecution Policy Guidelines" or "the Guidelines"). A copy of the said amendments is annexed to the founding affidavit marked "TN30".

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26. In terms of paragraph B6 of the amended Prosecution Policy it was stipulated that that the PCLU should be assisted in the execution of its duties by a senior designated official from the following State departments or other components of the NPA:

- 26.1. The National Intelligence Agency ("NIA");
- 26.2. The Detective Division of the South African Police Service ("SAPS");
- 26.3. The Department of Justice and Constitutional Development; and
- 26.4. The Directorate of Special Operations ("DSO").

27. When the Prosecution Policy became effective in December 2005 I reviewed the available evidence implicating the three suspects in the Chikane matter, which, in my opinion, was clearly sufficient to justify a prosecution. None had applied for amnesty for this offence. I therefore gave the initial instruction to proceed with the prosecution in February 2006.

28. In response to the said notification the three suspects made representations to me in terms of the Guidelines in support of their contention that they should not be subject to prosecution. These representations were reviewed by a team within the NPA under the

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leadership of Advocate T. Pretorius who reported to me that the representations did not comply with the requirements set out in the Guidelines, insofar as the suspects declined to disclose the full truth. After reviewing the report and the underlying documentation I wrote to the legal representative of the suspects in July 2006 informing him of my intention not to accede to the representations and to pursue the prosecution.

29. Meanwhile in early 2006 I had approached the then Commissioner of Police, the DG of Justice, and the heads of the NIA and the DSO (also known as 'the Scorpions') requesting them to nominate senior officials to assist the PCLU in accordance with the Prosecution Policy guidelines. Unfortunately the SAPS and the NIA never provided the PCLU with the necessary support to conduct its investigations adequately.
30. In early 2006, then Commissioner of Police, Mr. J Selebi, objected to Advocate Ackermann's participation claiming that Ackermann intended to prosecute the leadership of the ANC. This is notwithstanding the formal denial by the NPA that no such plans were in place. I advised Mr. Selebi that Ackermann was appointed as the head of the PCLU under Presidential proclamation and it was not for the SAPS to determine who should discharge the mandate given to the PCLU.
31. I then approached the Presidency in order to secure the necessary

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collaboration of the parties to apply the Prosecution Policy Guidelines. A meeting was arranged in mid-2006 by Reverend Frank Chikane, the then Director General in the Presidency. The meeting was attended by himself, the DGs of Justice and the NIA, Mr. Selebi, the Secretary of the Defence Secretariat, Mr. Jafta from the Presidency and I. Mr. Selebi again complained about Advocate Ackermann's involvement in the process.

32. Later in 2006 I was summoned to a meeting which was convened at the home of Minister Skweyiya, the then Minister of Social Development. The meeting was attended by the Ministers of Safety and Security and Defence, Minister Thoko Didiza (Acting Minister of Justice and Constitutional Development representing Minister Mabandla who was indisposed) and Mr. Jafta. The meeting was called by Acting Minister Didiza and I was advised that it related to the prosecution in the Chikane matter.
33. At this meeting it became clear that there was a fear that cases like the Chikane matter could open the door to prosecutions of ANC members. I quote hereunder from my affidavit filed before the Ginwala Commission as to what transpired at this meeting:

"The Minister of Safety and Security was concerned about the decision to proceed with the prosecution and with Advocate Ackermann's involvement in the process and the issue of whether it was Advocate Ackermann or me who was behind the decision to

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prosecute.

The Minister of Social Development was concerned about the impact of the decision to prosecute on the ranks of ANC cadres who were worried that a decision to prosecute in the Chikane matter would then give rise to a call for prosecution of the ANC cadres themselves arising out of their activities pre-1994.

The Minister of Defence had concerns about where the decision to prosecute rested – did it rest with me or did it rest with Advocate Ackermann.

I explained to the Ministers that the decision to proceed with the prosecution rested with me as did all other decisions in regard to post-TRC prosecutions being considered by the PCLU. I assured them that no prosecution would be undertaken without my specific direction and reiterated my concern about the delay in the process particularly in view of the requirement that I report to parliament on these matters.

...The Minister of Defence appeared satisfied with my explanation that I would exercise the decision as to whether there was a prosecution or not. The Minister of Safety and Security appeared to continue to be worried about the involvement of Advocate Ackermann. I have no recollection of a particular position adopted by the Acting Minister of Justice."

34. Also in 2006 a further meeting took place at the office of the Presidency. My recollection of this meeting is that it was decided that the working committee or Task Team would not make recommendations on a decision

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as to whether to prosecute or not, but would be responsible for ensuring that I received all the necessary inputs and information from the various departments so as to assist me to make a well-considered decision.

35. At this meeting I proposed that Dr Silas Ramaite, the Deputy National Director of Prosecutions, should chair the Task Team. I suggested this in order to counter the complaints in regard to Advocate Ackermann and to get the Task Team working. The proposal was accepted.
36. Subsequent to this meeting there was a further meeting of Ministers in the security cluster at the office of the Minister of Safety and Security. This was attended by the Minister for Safety and Security, the Minister of Social Development, Acting Minister Didiza, Mr. Selebi, various DGs and Mr. Jafta. The proposal for the establishment of a working group was put to the Ministers and accepted.
37. After this meeting, in early October 2006 I again sent letters to the various Directors General, Mr. Selebi and the DSO inviting them each to nominate a senior official to perform the functions set out in paragraph B6 of the Guidelines.
38. The Task Team met for the first time on 12 October 2006. I attended the opening session of the first meeting together with Ms. Kalyani Pillay (my

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adviser), the Directors General of the NIA and Justice and Mr. Jafta from the Presidency. Aside from this meeting, I did not participate further in the activities of the Task Team. I received reports from time to time on their activities. These reports led me to believe that the committee was functioning and securing the requisite co-operation from the other agencies which had previously been missing.

39. Meanwhile I had received further representations from the suspects in the Chikane matter contending that they had received indemnity in respect of the threatened prosecution in terms of the original Indemnity Act of 1990. I sought an independent opinion from senior counsel concerning the validity of this claim of indemnity. The opinion was received in November 2006 and concluded that the claimed indemnities were no bar to prosecution and that the said law had been repealed in 1995.
40. Dr Silas Ramaite reported to me that at the Task Team meeting on 25 October 2006 had received an audit report from Advocate Ackermann on all cases in the possession of the PCLU. Dr. Ramaite reported to me further that the Chikane matter was discussed by Task Team for the first time at its meeting on 6 November 2006. Mr. J Lekalakala of the SAPS stated that the National Commissioner believed that Rev. Chikane was not interested in a prosecution. Advocate Ackermann however indicated that Rev. Chikane had left the matter in the hands of the NPA.

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41. In early December 2006 I was informed by Dr Ramaite of the renewed contention by Mr. Selebi that Reverend Chikane had not been consulted. Reverend Chikane had in fact been extensively consulted in relation to the proposed prosecution. I personally held discussions with him during the course of interactions during 2006 and 2007. I also met with him separately. Reverend Chikane's advised me that while he may have forgiven his perpetrators, insofar as the application of the laws of the land was concerned, the matter must take its ordinary course. If a decision was made by the prosecuting authorities he would accept that.
42. Although I knew that Ackermann had discussed the matter with Rev. Chikane as far back as 2004, in December 2006 I instructed Advocate Ackermann to once again visit Rev Chikane to confirm his position.
43. However, towards the end of 2006 it became clear to me that powerful elements within government structures were determined to impose their will on my prosecutorial decisions. In this regard I quote from my affidavit filed before the Ginwala Commission:

"In December 2006 Dr Ramaite reported to me in regard to the contention raised by Mr. Selebi through Commissioner Jacobs that it was the function of the Task Team that it should make a final recommendation to a body identified as the "Committee of Directors

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General" which would in turn make recommendations to me. In essence the proposal made by Mr. Selebi and subsequently supported by the Directors General of Justice and NIA amounted to a reversion to a two stage process in which my decision on any prosecution would be dependent upon a prior recommendation by an intervening committee of directors general which would be subject to the same constitutional challenge as had led to the rejection of this proposal in 2004.

It became clear to me that there was a material misunderstanding in regard to the role of the Task Team and that unless this was resolved, I would not be able to carry out my functions within the contemplation of the relevant legislation and as envisaged by the Government."

Developments from 2007

44. In early 2007, as a result of the differences in approach that had developed between the NPA and the SAPS, NIA and DoJ I informed Mr. Selebi and the Directors General that there was a serious misunderstanding. I resolved to approach the Minister of Justice and request her guidance. Pending such response the functioning of the Task Team was compromised by the uncertainty and it held no further meetings until 8 August 2007.
45. Towards the end of January 2007 Advocate Ackermann and Advocate Mthunzi Mhaga (also of the PCLU) reported to me that they had met with

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Reverend Chikane on 22 January 2007 and that he had reaffirmed his attitude, namely that he was not against a prosecution and that the matter should take its ordinary course. In the light of this confirmation I wrote to the legal representatives of Messrs. Otto, Smith and van Staden on 25 January 2007 and informed them that the matter would now proceed and I instructed the PCLU to act accordingly.

46. Around this time, the former Minister of Police, Adriaan Vlok and the former Commissioner of Police, General Johann van der Merwe, had both made representations to me as contemplated in the Guidelines. They both admitted to authorising the murder of Reverend Chikane and requested me not to prosecute them in the light of this disclosure. However, they declined to make full disclosure in response to requests for information. I accordingly declined to accede to their request that they be given immunity from prosecution in terms of the Guidelines.

47. On 6 February 2007 I had a meeting with the Minister of Justice and Constitutional Development, Mrs. B S Mabandla. During this meeting it appears that she had gained the impression that I had agreed not to pursue the TRC cases. On 8 February 2007, she addressed a letter to me titled "TRC MATTERS", a copy of which is annexed hereto marked "VPP2" in which she stated the following:

"I must advise you at the outset that the media articles alleging that

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the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise. In our discussions you briefly mentioned to me that the NPA will not go ahead with prosecutions. As you had undertaken to advise me in writing, I will appreciate it if you could advise me urgently on the matter so that there can be certainty."

48. An example of one of the articles in the press is from the Beeld newspaper titled "Cops up for apartheid crimes" which was published on 7 February 2007. A copy of this article is annexed hereto marked "VPP3".
49. I am at a loss to explain how the Minister reached such a conclusion. Her letter disclosed an assumption that the TRC matters will not be prosecuted. I found this to be a disturbing development as it appeared that at a political level there was an expectation that I would not prosecute the TRC cases. I regarded such an expectation as unwarranted interference in my constitutional duty to prosecute without fear, favour or prejudice.
50. It is most likely that I would have clarified my position with the Minister, either through a meeting or a telephone discussion. I would have confirmed to the Minister that it was not my intention to drop the TRC cases.
51. I decided to prepare a detailed memorandum for the Minister to set out the history behind the policy to the TRC cases and to inform the Minister of the

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problems experienced in implementing this policy. This memorandum is titled 'PROSECUTION OF OFFENCES EMANATING FROM CONFLICTS OF THE PAST: INTERPRETATION OF PROSECUTION POLICY AND GUIDELINES' and was dated 15 February 2007. This memorandum was annexed to my affidavit before the Ginwala Commission marked as "TRC1".

52. In this memorandum I concluded that there had been improper interference in relation to the TRC cases and that I had been obstructed from taking them forward. I complained that such interference impinged upon my conscience and my oath of office. I indicated that I was unable to deal with these cases in terms of the normal legal processes and sought guidance on the way forward.
53. As I had marked this memorandum as an "*internal secret memorandum*" I have not attached it to this affidavit. I have attached it to an *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. In this regard I make the following submissions:
- 53.1. The issues and complaints raised in the memorandum have already been discussed in the body of my affidavit filed before the Ginwala Commission, which has been part of the public record

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since 7 May 2008, and which was also part of the court record in the matter of *Nkadimeng & Others v The National Director of Public Prosecutions & Others* (TPD case no 32709/07).

- 53.2. In my view, there is nothing in the memorandum that implicates or impairs national security.
- 53.3. Since the memorandum points to unlawful and unconstitutional conduct it would in the public interest for this memorandum to be released
- 53.4. The public interest in the disclosure of the memorandum far outweighs any possible contemplated harm, inconvenience or embarrassment.
54. I never received any response from the Minister to this memorandum. Given the serious issues I was raising in the memorandum, and given that the NPA Act criminalizes obstruction of the work of the prosecuting authority, I would have expected an immediate response from the Minister. The failure or refusal of the Minister to respond to my memorandum suggested to me that she preferred for the deadlock between the NPA and the SAPS, NIA and DoJ to remain in place.

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55. During the course of the next few months the legal representative of Messrs. Otto, Smith and van Staden, Vlok and van der Merwe, held detailed negotiations with Advocate Ackermann and members of the PCLU in regard to a plea and sentencing agreement.
56. The negotiation of the plea and sentencing agreements with the five accused was an extended process and was only concluded in early July 2007. On 10 July 2007 I sent a memorandum to the Minister informing her of the fact that the prosecution had been set down for hearing on 17 August 2007 and that all accused had indicated their intention to plead guilty to a charge of attempting to murder Reverend Chikane by means of poisoning. The memorandum informed her of the fact that plea and sentencing agreements had been entered into. To the best of my recollection the Minister did not respond to this memorandum.
57. On or about 10 July 2007 I went off on compassionate leave because of the illness and subsequent death of my mother. In my absence, on 17 July 2007, Dr Ramaite and Advocate Ackermann were summoned to a meeting with the Minister and reported to her on these developments.
58. In August 2007, those implicated in the Chikane case pleaded guilty to the charges in exchange for suspended sentences as per Section 105A of the Criminal Procedure Act, 1977. Vlok and Van der Merwe were sentenced to

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ten years in prison suspended for five years, while the other three received five year prison sentences, suspended for five years.

59. I would have preferred a full prosecution in this case because Adriaan Vlok and Johan van der Merwe only made limited disclosure. They largely confined their disclosure to facts that were already in the public domain. They declined to disclose detailed information in relation to the compiling of the hit list and who was behind such compilation. They did not reveal the other names on the list; the *modus operandi* of the other hits or the identities of the other masterminds and perpetrators.
60. A full prosecution in the Chikane case would have produced greater truth and accountability. However there was strong political resistance to this prosecution and the pursuit of the other political cases. It was clear to me that the government, and in particular the then Minister of Justice, did not want the NPA to prosecute those implicated in the Chikane case. This was due to their fear of opening the door to prosecutions of ANC members, including government officials. Moreover I could not rely on the police to investigate this case, and the other political cases, thoroughly. Therefore, a plea and sentence bargain was in my view the most appropriate compromise in the circumstances.
61. Shortly after the plea and sentence agreement had been confirmed in court

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a newspaper article appeared in the Rapport newspaper of 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. The claim was made on the basis of a fabricated document. A copy of this newspaper article is annexed hereto marked "VPP4". The NPA responded to this article by way of a press statement dated 21 August 2007 in which the allegations made in the Rapport article were denied. A copy of this press statement is annexed hereto marked "VPP5".

62. After the newspaper article was published, I was summoned to a meeting of the of the subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on Post TRC matters, which was held on 23 August 2007. This meeting was attended by several cabinet ministers, directors-general and Mr. Selebi. Cabinet Ministers included the Minister for National Intelligence Services, Mr. Ronnie Kasrils, Minister Mabandla, Minister Skweyiya amongst others.
63. During the meeting, Mr. Selebi said to me that the *'gloves are now off'* and that he was *'declaring war'* on me. In response I told him: *"for once in your life can you tell the truth and shame the devil"*.
64. Those at the meeting demanded answers from me about TRC prosecutions. They were also particularly concerned that I was instituting an investigation into certain members of the South African Police Service.

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This was in relation to my investigation into who was behind the fabrication of the letter purportedly written by Ackermann SC. Minister Mabandla told me to stop this investigation as we could not be seen to be taking each other to court. I advised the Minister that I would not stop the investigation.

65. I explained that:

65.1. the NPA was bound by law to continue with prosecutions of individuals who did not apply for or who were refused amnesty.

65.2. the NPA was actively preparing for those prosecutions and that we should not be stopped from doing our job.

65.3. It was my role as the NDPP to decide who would be charged.

66. On 28 August 2007 I received a faxed letter from the Minister of Justice, Ms. B S Mabandla. A copy of this letter is annexed hereto marked "VPP6". She referred to the meeting held on 23 August 2007. She noted that the National Commissioner of Police and I had different views on the Rapport article regarding the alleged forgery of certain NPA documents. She noted that I had initiated an investigation into the alleged forgery but she complained that she had not been advised of this decision or the basis thereof. Paragraphs 4 and 5 of the Minister's letter are particularly

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revealing:

4. In the course of the discussion, it became clear that Mr. J Selebi was of the view that there is no truth in the Rapport article, and he produced documents to support his argument that indeed there is an investigation by the NPA on certain political office bearers.

5. It was suggested at the meeting then that it would be useful if you could respond to the allegation that there is an investigation as mentioned above. (Emphasis added).

67. The Minister's letter was further indication of the view held at ministerial level that I should not enjoy actual discretion to make prosecutorial decisions in relation to the so-called political cases arising from the conflicts of the past.

68. I responded to the Minister's letter by way of a letter dated 29 August 2007, a copy of which is annexed hereto marked "VPP7". My copy of this letter is not on an NPA letterhead, but I confirm that the contents thereof were transmitted to the Minister.

69. In this letter I referred to the 23 August 2007 meeting:

"....which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members."

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70. I confirmed that there was no investigation by the NPA *"against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police"*.
71. In relation to paragraph 4 of the Minister's letter I noted that it is:
- "....clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored."*
72. I reminded the Minister that my predecessor had satisfied himself that there was no basis for the leadership of the ANC to be investigated and he had then briefed the then Minister of Justice, as well as the President. I also advised the Minister that all the dockets relating to the TRC cases, which had been stored at the Office of the Director of Public Prosecutions (DPP) in Pretoria, had been handed over to the SAPS in early and mid-2004. In my capacity as then DG of Justice I was actually present in the office of the DPP when representatives from the SAPS collected the said dockets.
73. I concluded my letter by requesting an urgent meeting with the Minister and myself and my Deputies. I also requested an opportunity to appear before the National Security Council *"to give a true account of this issue"*.
74. The Minister did not respond to my requests and these meetings never

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took place. On 23 September 2007 I was suspended from office by President Mbeki. Shortly after my suspension I learned that Advocate Ackermann had been relieved of his duties in relation to the TRC cases.

CONCLUSION

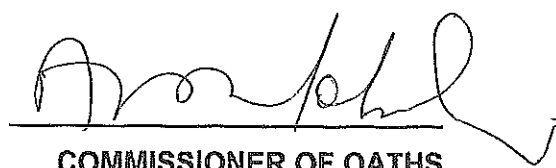
75. I have little doubt that my approach to the TRC cases contributed significantly to the decision to suspend me. It is no coincidence that there has not been a single prosecution of any TRC matter since my suspension and the removal of the TRC cases from Advocate Ackermann.
76. The political interference or meddling that I have set out in this affidavit is deeply offensive to the rule of law and any notion of independent prosecutions under the Constitution. It explains why the TRC cases have not been pursued. It also explains why the disappearance and murder of Nokuthula Simelane was never investigated with any vigour and why the pleas of her family and her representatives were ignored.


VUSUMZI PATRICK PIKOLI

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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 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 Lehloyo Dorckey Mohohlo
Commissioner of Oaths
Practising Attorney
2nd Floor, Leadership House, 40 Shortmarket Str
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**STATEMENT BY PRESIDENT THABO MBEKI TO THE NATIONAL HOUSES OF PARLIAMENT
AND THE NATION, ON THE OCCASION OF THE TABLING OF THE REPORT OF THE TRUTH
AND RECONCILIATION COMMISSION: CAPE TOWN, APRIL 15, 2003.**

Madame Speaker and Deputy Speaker;
Chairperson and Deputy Chairperson of the Council of Provinces;
Deputy President;
Chief Justice and Members of the Judiciary;
Former Members of the Truth and Reconciliation Commission;
Ministers and Deputy Ministers;
Distinguished Premiers;
Honoured Traditional Leaders;
Leaders of the Chapter Nine Institutions;
Honourable Leaders of our Political Parties;
Your Excellencies, Ambassadors and High Commissioners;
Honourable Members;
Distinguished Guests;
Fellow South Africans:

We have convened today as the elected representatives of the people of South Africa to reflect on the work of the Truth and Reconciliation Commission, to examine its Recommendations and to find answers, in practical terms, to the question - where to from here!

We wish to acknowledge the presence of Commissioners of the erstwhile TRC, who took time off their busy schedules to join us in commending the Report to our national parliament.

I am confident that I speak on behalf of all Honourable Members when I say to these Commissioners, and through them, to Archbishop Desmond Tutu and the other Commissioners not present here today, that South Africa sincerely appreciates the work that they have done. Our thanks also go to the staff of the Commission and all who contributed to the success of the work of the TRC, which we are justified to celebrate today.

They did everything humanly possible to realise the objectives of a process novel in its conception, harrowing in its execution and, in many respects, thankless in balancing expectation and reality. Our assessment of the TRC's success cannot therefore be based on whether it has brought contrition and forgiveness, or whether at the end of its work, it handed us a united and reconciled society. For this was not its mandate. What the TRC set out to do, and has undoubtedly achieved, is to offer us the signposts in the Long March to these ideals.

What it was required to do and has accomplished, was to flag the dangers that can beset a state not premised on popular legitimacy and the confidence of its citizens, and the ills that would befall any society founded on prejudice and a belief in a "master race".

The extent to which the TRC could identify and pursue priority cases; its ability to bring to its hearings all relevant actors; the attention that it could pay to civil society's role in buttressing an illegitimate and illegal state; and the TRC's investigative capacity to pursue difficult issues with regard to which the actors had decided to spurn its call for co-operation - all these weaknesses were those of society and not the TRC as such.

And, we make bold to say that all these complexities make the product of the work of the TRC that much more outstanding and impressive.

The pain and the agony that characterised the conflict among South Africans over the decades, so vividly relived in many hearings of the Commission, planted the seed of hope - of a future bright in its humanity and its sense of caring.

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It is a future whose realisation gave life to the passion for the liberation of our people, of Oliver Tambo and Chris Hanl, the tenth anniversary of whose passing away we mark this month. This includes others such as Robert Mangaliso Sobukwe and Steve Bantu Biko, who passed away 25 years ago this year and last year respectively. They joined and have since been joined by many other patriots to whom freedom meant life itself.

We are indebted to all of them; and we shall work to ensure that their memory lives on in the minds of generations to come, inspired by our common determination that never again should one South African oppress another!

At a critical moment in our history, as a people, we came to the conclusion that we must, together, end the killing. We took a deliberate decision that a violent conflict was neither in the interest of our country nor would it solve our problems.

Together, we decided that in the search for a solution to our problems, nobody should be demonised or excluded. We agreed that everybody should become part of the solution, whatever they might have done and represented in the past. This related both to negotiating the future of our country and working to build the new South Africa we had all negotiated.

We agreed that we would not have any war crimes tribunals or take to the road of revenge and retribution.

When Chris Hanl, a great hero of our people was murdered, even as our country was still governed by a white minority regime, we who represented the oppressed majority, said let those who remained in positions of authority in our country carry out their responsibility to bring those who had murdered him to book. We called on our people neither to take the law into their hands nor to mete out blind vengeance against those they knew as the beneficiaries of apartheid oppression.

We imposed a heavy burden particularly on the millions who had been the victims of this oppression to let bygones be bygones. We said to them – do not covet the material wealth of those who benefited from your oppression and exploitation, even as you remain poor.

We walked among their ranks saying that none among them should predicate a better future for themselves on the basis of the impoverishment of those who had prospered at their expense. We said to them that on the day of liberation, there would be no looting. There would be celebrations and no chaos.

We said that as the majority, we had a responsibility to make our day of liberation an unforgettable moment of joy, with none condemned to remember it forever as a day of bitter tears.

We said to our people that they should honour the traditions they had built and entrenched over centuries, never to hate people because of their colour or race, always to value all human beings, and never to turn their backs on the deeply-entrenched sentiment informed by the spirit of ubuntu, to forgive, understanding that the harm done yesterday cannot be undone today by a resolve to harm another.

We reminded the masses of our people of the values their movement for national liberation had upheld throughout a turbulent century, of everything they had done to defend both this movement and its values, of their obligation never to betray this noble heritage. Our people heeded all these calls.

By reason of the generosity and the big hearts of the masses of our people, all of us have been able to sleep in peace, knowing that there will be no riots in our streets. Because these conscious masses know what they are about, the Truth and Reconciliation Commission was able to do its work enjoying the cooperation of those who for ages had upheld the vision of a united humanity, in which each would be one's brother and sister. These are an heroic people whose greatest reward is the liberation of their country.

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Of them, the TRC says: "Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle... Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness... Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures... The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."

Some of these, who had to go through the torture chambers of the apartheid regime to bring us our liberty, are with us in this chamber today. There are others who sit on the balcony as visitors, who lost their loved ones whom they pride as liberators, and others who also suffered from repression.

Surely, all of us must feel a sense of humility in the face of such selfless heroism and attachment to principle and morality, the assertion of the nobility of the human spirit that would be demeaned, denied and degraded by any suggestion that these heroes and heroines are but mere 'victims', who must receive a cash reward for being simply and deeply human.

I know there are some in this House who do not understand the meaning of what I have just said. They think I have said what I have said to avoid the payment of reparations to those whom the TRC has identified as 'victims', within the meaning of the law.

Indeed, the TRC itself makes the gratuitous comment (para 16, p 163, Vol 6) that: "Today, when the government is spending so substantial a portion of its budget on submarines and other military equipment, it is unconvincing to argue that it is too financially strapped to meet this minimal (reparations) commitment."

Apart from anything else, the government has never presented such an argument. It is difficult to understand why the Commission decided to make such a statement.

Elsewhere in Vol 6, the Rev Frank Chikane, Director General in the Presidency and former General Secretary of the South African Council of Churches, is falsely reported as having made a presentation to the Amnesty Committee, which he never did.

He is then said to have told this Committee that he had participated in killing people. We do not understand how this grave and insulting falsification found its way into the Report of the TRC. We are pleased to report that Archbishop Tutu has written to Rev Chikane to apologise for this inexplicable account.

The poet, Mongane Wally Serote teaches us: 'to every birth its blood'. And so, today we acknowledge the pain that attended the struggle to give birth to the new life that South Africa has started to enjoy. In this era of increased geopolitical tension, we dare celebrate as South Africans that we found home-grown solutions that set us on a course of reconstruction and development, nation-building, reconciliation and peace among ourselves.

At this time, when great uncertainty about the future of our common world envelops the globe, we dare stand on mountain-tops to proclaim our humble contribution to the efforts of humanity to build a stable, humane and safer South Africa, and by extension, a more stable, more humane and safer world.

Honourable Members;

If we should find correct answers to the question, where to from here, we will need to remind ourselves of the objectives of the TRC from its very inception, so aptly captured in the preamble to the Promotion of National Unity and Reconciliation Act:

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"...the Constitution of the Republic of South Africa, 1993 provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, Irrespective of colour, race, class, belief or sex;

"...the Constitution states that the pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society;

"...It is deemed necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred, and to make the findings known in order to prevent a repetition of such acts in future;

"...the Constitution states that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation".

I am certain that we are all at one that the pursuit of national unity, the well-being of all South African citizens and peace, require reconciliation among the people of South Africa and the reconstruction of our society.

These are the larger and fundamental objectives that should inform all of us as we work to give birth to the new South Africa. The occasion of the receipt of the Report of the TRC should give us an opportunity to reflect on these matters.

Both singly and collectively, we should answer the question how far we have progressed in the last nine years towards the achievement of the goals of national unity, national reconciliation and national reconstruction. Both singly and collectively, we have to answer the question, what have we contributed to the realisation of these goals.

These larger questions, which stand at the heart of what our country will be, did not fall within the mandate of the Truth and Reconciliation Commission. The TRC was therefore but an important contributor to the achievement of the larger whole, occupying an important sector within the larger process of the building of a new South Africa.

As stated in the Act, the TRC had to help us to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights occurred, and to make the findings known in order to prevent a repetition of such acts in future.

It had to help us to promote understanding and avoid vengeance, to extend reparation to those who had been harmed and discourage retaliation, to rely on the spirit of ubuntu as a deterrent against victimisation.

The TRC has done its work as was required. As stipulated in the TRC Act, we are here to make various recommendations to our national parliament, arising out of the work of the TRC.

As the Honourable Members are aware, there is a specific requirement in the law that parliament should consider and take decisions on matters relating particularly to reparations. It would then be the task of the Executive to implement these decisions.

The law also provides that the national legislature may also make recommendations to the Executive on other matters arising out of the TRC process, as it may deem fit.

Let us now turn to some of the major specific details that the TRC enjoins us to address.

The first of these is the matter of reparations.

First of all, an integrated and comprehensive response to the TRC Report should be about the continuing challenge of reconstruction and development: deepening democracy and the culture of human rights, ensuring good governance and transparency, intensifying economic growth and social programmes, improving citizens' safety and security and contributing to the building of a humane and just world order.

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The TRC also argues for systematic programmes to project the symbolism of struggle and the ideal of freedom. This relates to such matters as academic and informal records of history, remaking of cultural and art forms, erecting symbols and monuments that exalt the freedom struggle, including new geographic and place names. The government accepts these recommendations.

Special emphasis will continue to be paid to rehabilitation of communities that were subjected to intense acts of violence and destruction. Experience gained with the projects in Katorus in Gauteng and Mpumalanga in KwaZulu/Natal demonstrates that great progress can be made in partnership between communities and government.

Further, with regard to specific cases of individual victims identified by the TRC Act, government has put in place and will intensify programmes pertaining to medical benefits, educational assistance and provision of housing and so on. From time to time, Ministers have elaborated and will continue to expatiate on the implementation of these and other related programmes.

The TRC has reported that about 22 000 individuals or surviving families appeared before the Commission. Of these, about 19 000 required urgent reparations, and virtually all of them, where the necessary information was available, were attended to as proposed by the TRC with regard to interim reparations.

With regard to final reparations, government will provide a once-off grant of R30 000 to those individuals or survivors designated by the TRC. This is over and above other material commitments that we have already mentioned.

We intend to process these payments as a matter of urgency, during the current financial year. Combined with community reparations, and assistance through opportunities and services we have referred to earlier, we hope that these disbursements will help acknowledge the suffering that these individuals experienced, and offer some relief.

We do so with some apprehension, for as the TRC itself has underlined, no one can attach monetary value to life and suffering. Nor can an argument be sustained that the efforts of millions of South Africans to liberate themselves, were for monetary gain. We are convinced that, to the millions who spared neither life nor limb in struggle, there is no bigger prize than freedom itself, and a continuing struggle to build a better life for all.

The second of the specific details in the TRC recommendations pertains to the issue of amnesty. A critical trade-off contained in the TRC process was between "normal" judicial processes on the one hand, and establishment of the truth, reparations and amnesty on the other.

Besides the imperatives of managing the transition, an important consideration that had to be addressed when the TRC was set up, was the extent to which the new democratic state could pursue legal cases against perpetrators of human rights violations, given the resources that would have to be allocated to this, the complexities of establishing the facts beyond reasonable doubt, the time it would take to deal with all the cases, as well as the bitterness and instability that such a process would wreak on society.

The balance that the TRC Act struck among these competing demands was reflected in the national consensus around provision of amnesty – in instances where perpetrators had provided the true facts about particular incidents – and restorative justice which would be effected in the form of reparations. Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter?

Let us start off by reiterating that there shall be no general amnesty. Any such approach, whether applied to specific categories of people or regions of the country, would fly in the face of the TRC process and subtract from the principle of accountability which is vital not only in dealing with the past,

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but also in the creation of a new ethos within our society.

Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases; and this was not to be.

This reality cannot be avoided.

Government is of the firm conviction that we cannot resolve this matter by setting up yet another amnesty process, which in effect would mean suspending constitutional rights of those who were at the receiving end of gross human right violations.

We have therefore left this matter in the hands of the National Directorate of Public Prosecutions, for it to pursue any cases that, as is normal practice, it believes deserve prosecution and can be prosecuted. This work is continuing.

However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our Intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.

This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts.

It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity.

This approach leaves open the possibility for individual citizens to take up any grievance related to human rights violations with the courts.

Thirdly, in each instance where any legal arrangements are entered into between the NDPP and particular perpetrators as proposed above, the involvement of the victims will be crucial in determining the appropriate course of action.

Relevant Departments are examining the practical modalities of dealing with this matter; and they will also establish whether specific legislation is required in this regard.

We shall also endeavour to explain South Africa's approach on these matters to sister-governments across the world. Our response to any judicial matters from these countries will be handled in this spirit and through the legal system. In this regard, we wish to reiterate our call to governments that continue to do so, that the maltreatment of former anti-apartheid fighters, based on the legal definitions of an illegal regime characterised by the United Nations as a crime against humanity, should cease.

In the recent past, the issue of litigation and civil suits against corporations that benefited from the apartheid system has sharply arisen. In this regard, we wish to reiterate that the South African Government is not and will not be party to such litigation.

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In addition, we consider it completely unacceptable that matters that are central to the future of our country should be adjudicated in foreign courts which bear no responsibility for the well-being of our country and the observance of the perspective contained in our constitution of the promotion of national reconciliation.

While Government recognises the right of citizens to institute legal action, its own approach is informed by the desire to involve all South Africans, including corporate citizens, in a co-operative and voluntary partnership to reconstruct and develop South African society. Accordingly, we do not believe that it would be correct for us to impose the once-off wealth tax on corporations proposed by the TRC.

Consultations are continuing with the business community to examine additional ways in which they can contribute to the task of the reconstruction and development of our society, proceeding from the premise that this is in their own self-interest. In addition to intensifying work with regard to such tasks as poverty eradication, and programmes such as Black Economic Empowerment, encouraging better individual corporate social responsibility projects, implementation of equity legislation and the Skills Training Levy, we intend to improve the work of the Business Trust.

In this context, we must emphasise that our response to the TRC has to be integrated within the totality of the enormous effort in which we are engaged, to ensure the fundamental social transformation of our country. This requires that at all times, we attain the necessary balance among the various goals we have to pursue.

The TRC also recommends that what it describes as the beneficiaries of apartheid should also make contributions to a reparation fund. The government believes that all South Africans should make such contributions. In the pursuit of the goal of a non-racial society, in which all South Africans would be inspired by a common patriotism, we believe that we should begin to learn to work together, uniting to address the common national challenges, such as responding to the consequences of the gross violations of human rights of which the TRC was seized.

In this regard, I am certain that members of our government will be among the first to make their contributions to the reparation fund, despite the fact that they stood on one side of the barricades as we engaged in struggle to end the apartheid system.

Many in our country have called for a National Day of Prayer and Traditional Sacrifice to pay tribute to those who sacrificed their lives and suffered during the difficult period of oppression and repression whose legacy remains with us. The government accepts this suggestion and will consult as widely as possible to determine the date and form of such prayer and traditional sacrifice. This is consistent with and would be an appropriate response to the proposals made by the TRC for conferences to heal the memory and honour those who were executed.

We shall also continue to work in partnership with countries of the sub-continent, jointly to take part in the massive reconstruction and development effort that SADC has identified as critical to building a better life for all. The peoples of Southern Africa, including the majority in South Africa endured untold privations and were subjected to destabilisation and destruction of property and infrastructure. They all deserve the speeding up of programmes of integration, reconstruction and development that governments of the region have agreed upon.

Madame Speaker;

The Truth and Reconciliation Commission has made many detailed observations and recommendations on structures and systems, which will be dealt with by relevant Ministers and Departments.

For the purpose of reparations, the government has already established the President's Fund, which is now operational, and has, as we earlier indicated, successfully dealt with the matter of urgent reparations. Like the TRC, we do hope that citizens from all sectors will find it within themselves to

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make a contribution to this Fund. Most of the resources that have been allocated for individual and community reparations that we referred to above will be sourced from this Fund, over and above the normal work of the relevant Departments.

We concur with the TRC that intensive work should be undertaken on the matter of monuments as well as geographic and place names. A Trust with the requisite infrastructure, headed by Mongane Wally Serote has been set up to implement the main project in this regard, which is the construction of the Freedom Park whose constituent parts are the Memorial, the Garden of Remembrance and the Museum. This should start by the tenth anniversary of freedom in 2004.

The National Directorate of Public Prosecutions and relevant Departments will be requested to deal with matters relating to people who were unaccounted for, post mortem records and policy with regard to burials of unidentified persons. We would like to encourage all persons who might have any knowledge of people still unaccounted for to approach the National Directorate of Public Prosecutions, the South African Police Service and other relevant departments.

The Department of Justice and Constitutional Development will monitor the implementation of all these programmes, and it will report to Cabinet on an on-going basis.

What we have identified today, arising out of the report of the TRC, forms part of the panoply of programmes that define the first steps in a journey that has truly begun. South African society is changing for the better. The tide has turned and the people's contract for a better tomorrow is taking shape.

The goals we defined for ourselves a decade ago, as we adopted the Interim Constitution, to pursue national unity, to secure peace and the well-being of all South African citizens, to achieve national reconciliation and the reconstruction of our society, have not fully been realised, despite the progress we have made.

The situation we face demands that none of us should succumb to the false comfort that now we live in a normal society that has overcome the legacy of the past, and which permits us to consider our social tasks as mere business as usual.

Rather, it demands that we continue to be inspired by the determination and vision that enabled us to achieve the transition from apartheid rule to a democratic order in the manner that we did. It demands that we act together as one people to address what are truly national tasks.

We have to ask ourselves and honestly answer simple questions.

Have we succeeded to create a non-racial society? The answer to this question is no!

Have we succeeded to build a non-sexist society? The answer to that question is no!

Have we succeeded to eradicate poverty? Once more the answer to that question is no!

Have we succeeded fully to address the needs of the most vulnerable in our society, the children, the youth, people with disabilities and the elderly? Once again the answer to this question is no!

Without all this, it is impossible for us to claim that we have met our goals of national reconciliation and reconstruction and development. It is not possible for us to make the assertion that we have secured the well-being of all South African citizens.

The road we have travelled and the advances we have made convey the firm message that we are moving towards the accomplishment of the objectives we set ourselves. They tell us that, in the end, however long the road we still have to travel, we will win.

In the larger sense, we were all victims of the system of apartheid, both black and white. Some among us suffered because of oppression, exploitation, repression and exclusion. Others among us suffered because we were imprisoned behind prison walls of fear, paralysed by inhuman beliefs in our racial superiority, and called upon to despise and abuse other human beings. Those who do such things cannot but diminish their own humanity.

To be true to ourselves as human beings demands that we act together to overcome the legacy of this common and terrible past. It demands that we do indeed enter into a people's contract for a better tomorrow,

Together we must confront the challenge of steering through a complex transition that demands that we manage the historical fault-lines, without papering over the cracks, moved by a new and common patriotism.

It says to all of us that we must honour those who shed their blood so that we can sit together in this Chamber by doing all the things that will make it possible for us to say, this South Africa that we have rebuilt together, truly belongs to all who live in it.

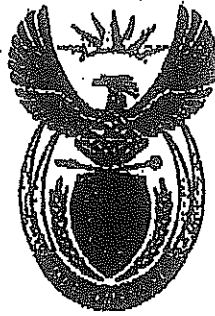
I am honoured to commend the Report of the Truth and Reconciliation Commission to our National Houses of Parliament and the nation.

Thank you.

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MINISTRY: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

Private Bag X276 Pretoria 0001 Tel: (012) 315 1781/2/3 Fax: (012) 315 1748
Private Bag X268 Cape Town 8000 Tel: (021) 467 1700 Fax: (021) 467 1730

Adv Vusi Pikoli
National Director of Public Prosecutions
Private Bag X752
PRETORIA
0001

8 February 2007

Dear Adv Pikoli

RE: TRC MATTERS

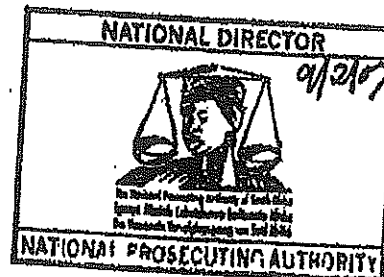
Our discussion in the above matter on Tuesday 6 February 2007 refers.

I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise. In our discussions you briefly mentioned to me that the NPA will not be going ahead with the prosecutions. As you had undertaken to advise me in writing, I will appreciate it if you could advise me urgently on the matter so that there can be certainty.

I trust that you find the above in order.

With warm regards


MRS B S MABANDLA
MINISTER



VPP B

news24 archives

Breaking News First

Cops up for apartheid crimes

2007-02-07 07:15

Jan-Jan Joubert and Willem Jordaan

Cape Town - The national prosecuting authority (NPA) has informed three security policemen that they are to be prosecuted for apartheid crimes.

These will be the first prosecutions since the Truth and Reconciliation Commission (TRC).

The case is related to attempts to poison the Rev Frank Chikane, who is now the director-general of the presidency.

Beeld has the names of the three security police officers and has established that they have been informed by their legal representative that the NPA intends to go ahead with prosecutions.

The move paves the way for prosecution of former minister of law and order Adriaan Vlok and former chief of police General Johan van der Merwe, who are both fully aware of, and prepared for, what will follow, according to sources.

Address to the nation

The NPA did not want to confirm or deny that the prosecutions were to begin.

In political circles, speculation is rife that the planned prosecutions could open a hornet's nest in the week of President Thabo Mbeki's address to the nation.

The question of prosecuting apartheid-era crimes is politically loaded, as some believe that they're necessary to conclude the TRC process, while others feel they could destroy reconciliation.

It appears that members of the latter group could use high-level political pressure to try to prevent prosecutions.

In terms of policy and the constitution, the decision to prosecute lies with the national director of prosecutions, advocate Vusi Pikoli, and not with the government.

Questions already have been asked in high circles about the equanimity of the NPA, and if well-known African National Congress figures who did not get amnesty, would be prosecuted.

One of the ANC members whose amnesty application was turned down was Thabo Mbeki, who applied with a number of other ANC members.

Vlok was in the news recently when he washed Chikane's feet to atone for the attempt to poison him while he was general secretary of the South African Council of Churches.

The three security policemen were connected to the same plot to kill Chikane.

Vlok's step was lauded last year by Mbeki, who added that South Africans should learn to listen more closely to each other across the boundaries of apartheid.

Vlok did not want to respond to rumours that he could be prosecuted. Van der Merwe also remained silent.

John Wagener, legal representative of the three security policemen, said the NPA informed him of their decision at the end of last month.

He did not want to comment on any particulars.

The latest events follow the tabling in parliament last January of a new prosecution policy on apartheid crimes, among other things.

The victim has a say

It includes a clause that gives the NPA discretion on whether or not to prosecute, if it is not in "the national interest".

One of the factors that must be taken into account is whether the apartheid victim wants the prosecution to go ahead.

In Chikane's case, he has indicated that he is not interested in prosecution, but that he wants full disclosure on the attempt on his life.

He has also indicated that the government is not interested in time-consuming prosecutions.

The NPA has indicated, nevertheless, that prosecution will go ahead.

Beeld

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Dossiere oor leiers se vergrype lê al jare in kluis ANC-lêers 'verdwyn'

Sonja Carstens Pretoria

Die polisie het nog niks gedoen om meer bewyse en getuienis te kry vir die moontlike vervolging van 37 destydse leiers van die ANC aan wie amnestie vir apartheidsmisdade geweier is nie.

Rapport het die afgelope week uit onberispelike bronne verneem die polisie-dossiere wat twee afgetrede polisie-lede vroeër saamgestel het, is al jare toegesluit by die hoofkantoor van die polisie se speurdienste. Die bronne se name word op versoek verswyg weens die sensitiewe poste wat hulle beklee.

Volgens die bronne is geen verdere ondersoekwerk na die inligting in die dossiere gedoen nie.

Die dossiere is vroeër verwyder uit 'n kluis in die kantore van die direkteur van openbare vervolgings (DOV) in Pretoria waar adv. Paul Fick, SC, hoof van die vervolgingspan wat die vermeende Boeremagde aankla, die hoof was van 'n span wat verder ondersoek ingestel het met die oog op moontlike vervolging.

Die nasionale vervolgingsgesag (NV) het die ondersoeke jare gelede weggeneem van Fick. Hy wou die afgelope week glad nie op vrae reageer nie.

Rapport verneem sedert dit uit Fick se kantoor verwyder is, is dit toevertrou aan 'n span by die NV wat dit verder moes ondersoek, maar wat weinig aan die ondersoeke gedoen het.

Hierna is adv. Anton Ackermann, SC, in Junie 2003 aangestel as hoof van 'n eenheid wat onder meer misdade teen die staat moes ondersoek. Ackermann was die aanklaer in die Vlok-Van der Merwe-verhoor.

Genl. Johan van der Merwe, voormalige polisiehoof, het Vrydag gesê "oorgenoeg getuienis" bestaan teen die ANC-leierskorps oor hul betrokkenheid by die landmynontploffing in 1995 waarin verskeie lede van die Van Eck- en De Necker-gesin gesterf het.

In Junie 2004 het mnr. Siphon Ngwema, destydse woordvoerder van die NV, gesê nie een van die 37 leiers, onder wie pres. Thabo Mbeki, mnr. Jacob Zuma, komm. Jackie Selebi, polisiehoof, mnr. Linda Mti, vorige kommissaris van korrektiewe dienste, en min. Essop Pahad kan vervolgt word nie omdat "daar eenvoudig nie genoeg getuienis is om 'n klagstaat op te stel nie".

Ngwema het destyds gesê die NV weet nie wéé het wát gedoen of wie die opdragte gegee het nie. "Indien die NV dit met die getuienis tot sy beskikking sou doen, is dit net so goed die vervolger besluit oudpres. PW Botha of oudpres. FW de Klerk moet teregstaan weens voorvalle in die apartheidsjare waarvoor niemand anders verantwoordelikeit aanvaar het nie," was Ngwema se woorde.

Mnr. Dirk van Eck het reeds aangedui hy is gereed om 'n klag in te dien teen ANC-leiers wat nie amnestie ontvang het nie vir die aanval wat meer as die helfte van sy gesin uitgewis het.

Die politieke omstredeheid oor vervolgings vir misdade uit die verlede sal uitbrel as die NV 'n vervolging instel teen genl. Basie Smit, 'n voormalige hoof van die polisie se speur- en veiligheidstak. Een van die klousules in Vlok en Van der Merwe se pletooreenkoms dwing hulle om in 'n moontlike verhoor teen Smit te getuig.

Rapport verneem Ackermann het vroeër skriftelik opdrag gegee dat die polisie nog getuienis in die ondersoeke na die ANC-leiers moet versamel met die oog op moontlike vervolging. Maar die afgelope week het die polisie geweier om te sê of die opdrag nagekom is en wat die vordering daarmee is.

Dir. Sally de Beer, Selebi se woordvoerder, het navrae na dir. Phuti Setati, woordvoerder van nasionale speurdiens, verwys.

"Die polisie wil sy kommentaar oor die saak voorbehou," het Setati gesê.

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scarstenss@rapport.co.za

) Vlok en Van der Merwe vra Mbeki en De Klerk om in te gryp – bl. 14

Google translate:

Dossiers on leaders' abuses lay for years in safe ANC files' disappear '
Sonja Carstens Pretoria

The police have done nothing to get more evidence and testimony for the possible prosecution of 37 former leaders of the ANC who amnesty for apartheid crimes were refused.

Report this week from impeccable sources learned that the police dockets that two retired police officers have made earlier, for years locked up at the headquarters of the police's detective services. The sources' names are withheld at the request because of the sensitive positions that they hold. According to the sources, no further investigation into the information taken in the case files. The dossiers were earlier removed from a safe in the office of the Director of Public Prosecutions (DPP) in Pretoria Advocate. Paul Fick, SC, head of the prosecution team who accuse the alleged Boer force members, the head of a team that further investigation instituted with a view to possible prosecution.

The National Prosecuting Authority (NPA) has taken the examinations years ago Fick. He wanted the past week did not respond at all to questions.

Butchery since it was removed from Fick's office, it was entrusted to a team at the NA that it had investigated further, but that did little to investigations.

After this, Adv. Anton Ackermann, SC, was appointed in June 2003 as head of a unit that had investigated include crimes against the state. Ackermann was the prosecutor in the Vlok Van der Merwe trial.

Gen. Johan van der Merwe, a former police chief, said Friday "ample evidence" exists against the ANC leadership over their involvement in the landmine explosion in 1995 in which several members of the Van Eck- and the Necker family died.

In June 2004, Mr. Sipho Ngwema former spokesperson of the NPA, said none of the 37 leaders, including President. Thabo Mbeki, Mr. Jacob Zuma, Comm. Jackie Selebi, the police chief, Mr. Linda Mti, former commissioner of correctional services, and more. Essop Pahad can be prosecuted because "there is simply not enough evidence for an indictment to prepare,".

Ngwema said then that the NPA do not know who has what or who did not give the orders. "If the SA would do this with the evidence at its disposal, it is as well the prosecutor decides former president. PW Botha or former president. FW de Klerk arraigned because of incidents in the apartheid years for which no one has accepted responsibility," was Ngwema's words.

Mr. Dirk van Eck has indicated he is ready to file a complaint against ANC leaders not yet received amnesty for the attack that wiped out more than half of his family.

The political controversy over prosecutions for crimes of the past will expand as the NPA a prosecution against Gen. institute. Basle Smit, a former head of the police detective and security branch. One of the clauses of Vlok and Van der Merwe's plea agreement forcing them into a possible trial to testify against Smith.

Butchery Ackermann had earlier instructed in writing that the police have evidence in the investigation of the ANC leaders have gathered with a view to possible prosecution. But last week, the police refused to say whether the assignment is carried out and the progress it.

Dir. Sally de Beer, Selebi's spokesperson, referred questions to Dir. Phuti RAF spokesman national detective refers.

"The police want his comments on the case reserved," the RAF said.

scarstenss@rapport.co.za

) Vlok and Van der Merwe asked Mbeki and De Klerk to intervene - p. 14

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<http://www.gov.za/national-prosecuting-authority-rapport-article-ackermann>

National Prosecuting Authority on Rapport article on A Ackermann

21 Aug 2007

Response to article in rapport

21 August 2007

With reference to the statements attributed to Anton Ackermann SC in the rapport of 19 August 2007, the National Prosecuting Authority (NPA) wishes to place on record the following:

* In May 2004, Bulelani Ngcuka, the then National Director of Public Prosecutions, declined to prosecute the African National Congress (ANC) leadership in connection with the conflicts of the past. A press statement confirming this was released on 15 May 2004.

* Since that press release the National Prosecuting Authority and in particular Ackermann has not directed any further investigation into this matter.

* Subsequent to the media report by the Rapport on 19 August 2007, and on request by the National Prosecuting Authority, the South African Police Service (SAPS) provided a copy of letter purporting to be written by Ackermann on 26 June 2006, to the National Prosecuting Authority. The NPA regards this letter as a forgery and has authorised an immediate investigation into the matter.

Contact person:

Tlali Tlali

Cell: 082 333 3880

v.p.

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VPP6



MINISTRY
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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Our ref: 2/3/6
Enq: Adv. M Simelane

Adv V P Pikoll
National Director of Public Prosecutions
Office of the National Director of Public Prosecutions
Private Bag X 752
PRETORIA
0001

Dear Adv Pikoll

MEETING OF THE SUB COMMITTEE OF THE JCPS CABINET COMMITTEE ON
POST TRC MATTERS

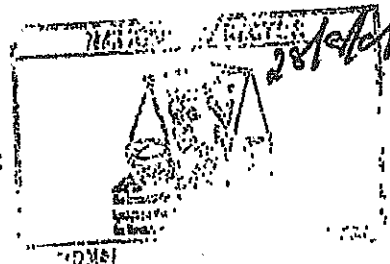
1. I refer to the discussions in the above meeting of 23 August 2007.
2. You will recall that both you and the National Commissioner, Mr. J Selebi, provided the sub-committee with different facts on the Rapport article regarding an alleged forgery of certain NPA documents.
3. You further confirmed that you have instituted a thorough investigation into the alleged forgery. I was however not advised of this decision and the basis thereof.
4. In the course of the discussion, it became clear that Mr. J Selebi was of the view that there is no truth in the Rapport article, and he produced documents to support his argument that indeed there is an investigation by the NPA on certain political office bearers.
5. It was suggested at the meeting then that it would be useful if you could respond to the allegation that there is an investigation as mentioned above.

Your urgent response would be highly appreciated. Any information that could shed light to the issues will also be welcome.

I trust that you find the above in order.

Yours sincerely

MS S MABANDLA, MP
Minister for Justice and Constitutional Development
Date: 28.08.07



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VPP7

Ref: NDPP/kp

Minister B. Mabandla
Minister of Justice and Constitutional Development
Momentum Building
cnr Prinsloo and Pretorius Streets
PRETORIA

29 August 2007

Dear Minister

**MEETING OF THE SUB-COMMITTEE OF THE JCPS CABINET
COMMITTEE ON POST TRC MATTERS**

1. I refer to your fax of 28 August 2007.
2. I refer to the meeting of the sub-committee of 23 August 2007, which I considered to be most unpleasant. Despite the information I put before the committee, I am both surprised and disappointed to see that I now stand accused of misleading alternatively having lied to the sub-committee members.
3. I confirm that I stand by what I said about the National Commissioner of Police and the South African Police Service (SAPS).
4. I confirm and repeat the following:
 - 4.1 That I have instructed that an investigation be carried out in respect of the forgery of the memo by Adv. Ackermann SC.
 - 4.2 As borne by the attached annexure and the numerous communications to the Minister, there is no investigation by the NPA or any of its officials against the 37 ANC leaders including the President of this country, contrary to the assertions of the National Commissioner of Police. I give the

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Minister the assurance that no investigations or decisions to prosecute in these matters are done without my express authorization as per the prosecution guidelines as they pertain to the post TRC matters.

5. While I am not certain as to what the meaning of paragraph 4 of your letter is, it is, however, clear that my account of the position as it relates to the NPA's handling of the post TRC matters has been completely ignored.
6. Arising from allegations made by two police officers, as well as a threat by a lawyer representing former Security Branch members who were facing prosecution, my predecessor had the material relating to the ANC leadership perused and satisfied himself that there was no basis for the leadership to be investigated. He also briefed your predecessor, as well as members of the Office of the Presidency to this effect. In my presence and in my capacity as the then Director General of the Department of Justice & Constitutional Development, all the police dockets stored at the Office of the Director of Prosecutions: Pretoria were handed over to the police. These events all took place in early and mid-2004. I confirm as well that the Minister was made aware of all these facts as far back as December 2004 and I am surprised that this issue is now resurfacing.
7. In view of all that is transpiring now, I request an urgent meeting with the Minister, my Deputies and myself. Further, I request an opportunity to appear before the National Security Council to give a true account of this issue.

Kind regards

Adv. VP Pikoli
National Director of Public Prosecutions
Date:

V.P.



TP 9

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

TP



WILLEM SCHOON

Ninth Respondent

AFFIDAVIT

I, the undersigned

ANTON ROSSOUW ACKERMANN

state under oath as follows:

INTRODUCTION

1. I am a senior counsel, a former Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions (the first respondent in this matter, hereinafter referred to as the "first respondent" or the "NDPP"). I am currently retired.
2. In terms of section 13(1)(c) of the National Prosecuting Act No. 32 of 1998 ("the Act") I was appointed by President T M Mbeki, under a Presidential Proclamation dated 24 March 2003, to head the Priority Crimes Litigation Unit ("PCLU"). A copy of this proclamation is annexed to the founding affidavit marked "TN28". I served as head of the PCLU between 2003 and 31 March 2013. I retired from the National Prosecuting Authority on 31 March 2013.

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3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct. As I have not studied all the relevant official documentation I stand to be corrected on certain details, such as dates.
4. I depose to this affidavit at the request of the applicant's legal representatives and in order to ensure that all the relevant facts are placed before this Court.

EXPERIENCE

5. I have worked as a prosecutor for more than 40 years. I have prosecuted several high profile cases in South Africa. I set out hereunder an outline of my professional career:
 - 5.1. Joined the Department of Justice in 1970.
 - 5.2. Graduated from the University of Potchefstroom with the degrees of B Juris and LLB in 1975.
 - 5.3. Admitted as an advocate in 1976.
 - 5.4. Served with the office of the Attorney-General in Pietermaritzburg between 1977 and 1989.
 - 5.5. Appointed Deputy Attorney General: Transvaal in 1989 and served in this post until 2003.

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- 5.6. Senior Counsel status was conferred on me in 1993.
- 5.7. Appointed head of the Priority Crimes Litigation Unit (PCLU) in March 2003.
- 5.8. I retired in 2013.

CONFIRMATION

- 6. I confirm the contents of the founding affidavit of Thembisile Phumelele Nkademeng ("the applicant") and the supporting affidavit of Vusumzi Patrick Pikoli insofar as they relate to me.
- 7. Although I was not specifically aware of an official policy or decision to stop, obstruct or hold back the investigation and possible prosecution of the cases recommended for prosecution by the Truth and Reconciliation Commission ("TRC"), including the kidnapping, assault and murder of Nokuthula Aurelia Simelane, ("Nokuthula") in the case: Priority Investigation: JV Plein: 1469/02/1996, I can confirm that I was effectively stopped from pursuing the investigation and prosecution of the so-called political cases arising from South Africa's past ("the TRC cases").
- 8. In this affidavit I set out my experiences in trying to pursue the prosecution of the TRC cases and how I was effectively stopped from carrying out this work.



BACKGROUND

9. If my memory serves me correctly, in 1998 the investigation dockets held by the Unit headed up by Transvaal Attorney General Dr. Jan D'Oliveira Unit were transferred to the National Prosecuting Authority ("NPA"). In terms of a directive issued in 1999 by the then National Director of Public Prosecutions ("NDPP"), the TRC related cases were transferred from the then Directorate of Special Operations ("DSO"), and from the various offices of the Directors of Public Prosecutions ("DPP") and the South African Police Service ("SAPS") to the office of the NDPP.
10. In 1999, a working group called the Human Rights Investigative Unit ("HRIU") was established within the NPA by the then National Director of Public Prosecutions ("NDPP"), Bulelani Ngcuka, on the initiative of the then Minister of Justice, Dullah Omar. The head of the Unit was Vincent Saldanha. It was mandated to review, investigate and prosecute cases in which perpetrators had been denied amnesty or in which perpetrators had not applied for amnesty. The HRIU continued operations until 2000, however it instituted no prosecutions.
11. In 2000, the dockets held by the HRIU were transferred to the Directorate of

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Special Operations ("DSO"), more widely known as the Scorpions. An entity was established within the DSO to handle the TRC cases known as the Special National Projects Unit ("SNPU"), which was headed by Advocate Chris Macadam. The SNPU operated until 2003, but it too instituted no prosecutions.

12. On 24 March 2003 I was appointed to head up the newly established PCLU. The mandate of the PCLU is to manage and direct investigations and prosecutions in relation to various priority crimes, including serious national and international crimes, such as terrorism, sabotage, high treason, sedition, foreign military crimes and other priority crimes as determined by the NDPP.
13. On 15 April 2003, the TRC Report was tabled before Parliament by President Thabo Mbeki who directed that the NDPP must institute prosecutions where appropriate.
14. In May 2003 the then NDPP, Advocate Bulelani Ngcuka, made a determination that all TRC-related cases, in which amnesty had been denied or not applied for, were '*priority crimes*' in terms of the proclamation. This resulted in more than 400 investigation dockets being transferred to my office. Advocate Chris Macadam, attached to my office, and I conducted the initial audit and identified 21 cases as worthy of further investigation.
15. During 2004 and 2005 the PCLU identified 16 cases for further investigation and

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possible prosecution. The Simelane case was one of the cases earmarked for further investigation.

16. In relation to post-TRC prosecutions conducted by the PCLU, only the following cases have been instituted: S v Terre'blanche, S v Blani and S v Nieuwoudt & 2 Others.

16.1. In 2003, the late Eugene Terre' Blanche, former leader of the Afrikaner Weerstandsbeweging, (Afrikaner Resistance Movement), who had been charged with various acts of terrorism during the 1990s, entered into a 'plea agreement' with the PCLU in terms of 105A of the Criminal Procedure Act. Terre' Blanche pleaded guilty to five counts of terrorism in contravention of the Internal Security Act and was sentenced to six years of imprisonment, which was wholly suspended. He had not applied for amnesty. This was the first TRC related case taken up by the PCLU.

16.2. During 2004 I came across the docket of Buyile Roni Blani, an ANC member, who was implicated in the mob killing of two people in 1985. Blani was charged with the killings in 1985 but managed to flee to Angola where he remained in exile until his return in 1992. He did not apply for amnesty. Since the evidence was clear and compelling and the case was already fully investigated I instructed that it should proceed. Blani was arrested and granted bail. On 25 April 2005, following a plea and sentence agreement, he was convicted on all charges and sentenced to five years imprisonment,

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four of which were suspended for five years.

16.3. In 2004, Gideon Nieuwoudt (who died in 2005), Johannes Martin van Zyl, and Johannes Koole were each charged with abduction, assault and murder of the 3 anti-apartheid activists, known as the PEBCO 3.

16.3.1. This was the first case that the PCLU brought in respect of perpetrators who had been denied amnesty. Their applications for amnesty had been denied in 1999.

16.3.2. Shortly after their bail hearings in 2004, Nieuwoudt and van Zyl applied to court to review the decisions to refuse them amnesty. The review was delayed by some 5 years because of the failure of the Department of Justice to file its answering papers. Eventually in 2009 the High Court ruled that an Amnesty Committee be convened to rehear the application of van Zyl.

16.3.3. The case against the three former security policemen was provisionally withdrawn in 2009. The NPA submitted to the High Court that the prosecution could not proceed while there was an amnesty proceeding pending. The Department of Justice filed an affidavit recommending the provisional withdrawal of the criminal charges against the surviving Johannes Koole, and Martin Van Zyl,

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who was seriously ill. The Amnesty Committee was never reconvened and the case against Van Zyl and Koole was never reinstated.

17. On the morning of 11 November 2004 the police was on the verge of effecting the arrests of three former officers of the Security Police on charges which related to the attempted murder of the Rev. Frank Chikane, the former head of the South African Council of Churches in 1989 by poisoning. The three former policemen were former Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden. None had applied for amnesty for this crime.

17.1. On the same morning I received a phone call from Jan Wagenaar, the attorney for the abovenamed suspects. He told me that I would receive a phone call from the Ministry of Justice and I would be advised that the case against his clients must be placed on hold.

17.2. Shortly thereafter I received a phone call from an official in the then Ministry of Justice. I was informed by the said official that a decision had been taken that the Chikane matter should be put on hold pending the development of guidelines to deal with the TRC cases. I told him that that only the NDPP could give me such an instruction.

17.3. A few minutes later the NDPP contacted me and instructed me not to

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proceed with the arrests. I believe that it can be safely assumed that the NDPP was instructed at a political level to suspend these cases.

18. All TRC related investigations and prosecutions were accordingly placed on hold pending the formulation of guidelines in relation to the so-called political cases of the past. These were to be incorporated as amendments to the Prosecution Policy (hereinafter referred to as "the amendments" or "the guidelines"). I was instructed by the NDPP to stop working on all the TRC cases.
19. At least two legal opinions were prepared by my office regarding the constitutionality of the proposed amendments to the Prosecution Policy and submitted to the NDPP. The opinions pointed out that the amendments amounted to a rerun of the TRC's amnesty process and would not survive constitutional scrutiny. At a number of meetings I voiced my opposition to the proposed amendments. I recall that I had numerous consultations with Gerard Nel, the legal adviser to the NDPP, who was playing a leading role in formulating the proposed amendments.
20. This suspension of prosecutions amounted to an effective moratorium on the pursuit of TRC related cases.
21. During 2005 I met with representatives of the Simelane family. They raised a number of requests, including that the PCLU should:

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- 21.1. Investigate with a view to prosecuting Detective Inspector Msebenzi Timothy Radebe, who played a role in the abduction and the torture of Simelane both at Norwood and Northham and who did not apply for amnesty.
 - 21.2. Investigate with a view to bringing defeating the ends of justice charges against Coetzee and Pretorius for intimidating the late Sergeant Lengene into making a false statement and for attempting to coach Norman Mkhonza into making a false statement.
 - 21.3. Follow up on the results of the examination of the micro cassette tape containing the conversation between Scotch, Pretorius and Coetzee; and follow up on the request for lists of unidentified bodies received by police mortuaries between 1980 and 1996.
 - 21.4. Investigate the circumstances of the deaths of two key witnesses, Sergeant Mathibe and Sergeant Lengene.
22. I was not able to assist with these requests as at that stage my hands were tied with the effective moratorium in place pending the issuing of the new Prosecution Policy.
23. In December 2005 the amendments to the Prosecution Policy were issued. These

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amendments permitted the granting of effective indemnities to perpetrators in TRC related cases who did not make use of the erstwhile amnesty process.

23.1. The NDPP was authorised to apply the same amnesty criteria used by the TRC but could also decline to prosecute on other open-ended criteria such as the perpetrator's demonstration of remorse, level of indoctrination sustained, attitude towards reconciliation and/ or his willingness to abide by the Constitution.

23.2. These criteria would entitle the NDPP to decline to prosecute, even where there was adequate evidence to justify a prosecution in a serious case such as kidnapping or murder.

23.3. The PCLU was expected to act under the advisement of a multi-departmental committee which included the National Intelligence Agency and the South African Police Service. The entire process would be carried out behind closed doors.

24. As mentioned above, I was opposed to the amendments to the Prosecution Policy as I felt they violated the constitutional rights of the complainants and constituted unwarranted interference in the prosecutorial independence of the NPA. I again expressed my dissatisfaction with various officials, including the NDPP. In my view the amendments or guidelines were aimed solely at accommodating

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perpetrators and providing them with another avenue to escape justice.

25. Once the guidelines were issued in December 2005 I wanted to proceed with the 5 cases I had identified with good prosecution prospects and the 11 cases which required further investigation. These were identified as "*major priorities*" for the PCLU for the 2006 – 07 period. Moreover a press statement issued by the NDPP during 2006 led to additional requests from victims for further investigations in their cases. However, with the exception of the Chikane matter, during the course of 2006 and 2007, the PCLU was unable to pursue any of the TRC cases for various reasons. These included a lack of investigative capacity as well as difficulties encountered in convening the multi-departmental committee that was meant to advise the PCLU on what cases to pursue.
26. In March 2006 I again met with the representatives of the Simelane family. I had to advise them that I was unable to take the investigation forward as there were no investigators attached to the PCLU. Requests I had made to the SAPS and the DSO for competent and experienced investigators, in this matter and the other TRC cases, had fallen on deaf ears. The said representatives also supplied me with a legal opinion which recommended that those involved in the torture of Ms. Simelane be charged with torture, as a crime against humanity or war crime, in terms of customary international law, since such crimes never prescribe.
27. As a result of this meeting the said representatives wrote to the then NDPP, Adv.

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Pikoli, requesting him to reach out to the SAPS and the DSO in order to secure competent investigators for the PCLU as a matter of urgency. These efforts were not successful. In subsequent interactions I advised the said representatives to pursue an inquest rather than a prosecution. I did so because I realized that there was no prospect of a serious investigation or prosecution taking place in the political context that prevailed at the time.

28. During 2006 the then NDPP, Adv Pikoli, appointed a team to review the representations made by the suspects in the Chikane matter who were seeking an indemnity under the amendments to the Prosecution Policy. The team was chaired by Dr. T. Pretorius. I refused to participate in this review as I regarded the said amendments as unconstitutional. After several months the review team concluded that no indemnities should be granted as the full truth had not been disclosed.
29. During 2007 the PCLU eventually returned to the Chikane attempted murder case and in June 2007 the three suspects, together with Adriaan Vlok, former Minister of Police, and Johan van der Merwe, former Commissioner of Police were charged with one count of attempted murder, alternatively conspiracy to murder Chikane. A plea and sentence agreement was agreed upon which the Court confirmed during August 2007. In terms of the plea and sentence agreement the accused all pleaded guilty to the charge of attempted murder. Vlok and van der Merwe were sentenced to ten years imprisonment, wholly suspended for five

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years on the condition that they are not convicted of a similar crime. Otto, Smith and van Staden were sentenced to five years imprisonment, wholly suspended for five years on the condition that that they are not convicted of a similar crime.

30. This case ought to have opened the door to the prosecution of General Basie Smit, who succeeded Van der Merwe as Commander of the Security Branch in October 1988, as well as other senior officers of the both the SAPS and the former South African Defence Force (SADF). However no further cases were pursued which can be attributed to political interference in the work of the NPA.
31. In 2008 the High Court in Pretoria (*Nkadimeng & Others v The National Director of Public Prosecutions & Others*, TPD case no 32709/07) struck down the amendments to the Prosecution Policy as unconstitutional. The Court found that the amendments were a "copy-cat" of the TRC amnesty process; that many of the criteria were not relevant in deciding whether or not to prosecute; and that they were moreover "a recipe for conflict and absurdity".

POLITICAL INTERFERENCE

32. The first act of political interference which effectively stopped the work of the PCLU into the TRC cases was the suspension of such cases during 2004 pending the issuing of the new prosecution guidelines. This introduced the effective moratorium I referred to above.

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33. Once the guidelines had been issued, and the multi-departmental working committee (subsequently referred to as the Task Team) was established in 2006, it became clear that the SAPS and NIA representatives believed they were part of the prosecutorial decision making process.

33.1. On 6 December 2006, the PCLU received a letter from the head of the SAPS Legal Support section, Major General P C Jacobs, representing the view of the National Commissioner, which indicated that before any prosecutorial decision was made in respect of the TRC cases, the Task Team must submit a final recommendation to a Committee of Directors General in respect of each case, which in turn must advise the NDPP in respect of who to prosecute or not.

33.2. In respect of the interactions between the NDPP and other government departments and officials, I refer to the affidavit of Adv. Pikoli, which is filed evenly herewith.

34. The NDPP objected to this approach on the basis that it would constitute an unwarranted interference in the work of the NPA. The NDPP would be obliged to wait for the process to be completed and to receive a recommendation before he could make a decision, even where there were reasonable prospects of a successful prosecution.

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35. During 2007 an office note, purportedly written by me in 2006, was circulated in certain government circles in which it was reflected that I was investigating criminal charges against 37 ANC leaders, including the then President, Thabo Mbeki. This office note was a fabrication. I had written this office note in 2003 but the date of the note had been adjusted to give the false impression that it had been compiled in 2006. I believe it was aimed at discrediting me and ultimately stopping the investigations into the TRC cases. I am firmly of the view that the then National Commissioner, the late Mr. J Selebi, played a conspicuous role in claiming that I was pursuing the said leaders.
36. During this time I was informed by Adv. Pikoli that the then Director-General of the Department of Justice, Menze Simelane, had approached him and raised concerns about my handling of the prosecution of the TRC cases. He asked the NDPP to relieve me of my duties in this regard, which the NDPP declined to do. The NDPP advised me that senior people in the government wanted to fire me because I was still pursuing the TRC cases.
37. Adv. Vusi Pikoli was suspended from his duties as NDPP in September 2007. Shortly after his suspension I was summoned to the office of Adv. Mokotedi Mpshe, then acting NDPP. Adv. Mpshe advised me that I was relieved of my duties in relation to the TRC cases with immediate effect. I have no doubt that Adv. Mpshe received a political instruction to remove me from these cases. I

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advised Adv. Mpshe that removing me from the TRC cases would not make the cases go away.

38. At the time, I believed that if I was being removed from the TRC cases, then nobody else would be permitted to pursue the cases boldly and fearlessly. It is no coincidence that there has not been a single further prosecution since I was relieved of my duties in this regard.

CONCLUSION

39. There is little doubt in my mind that the investigation and prosecution of the TRC cases have been effectively stopped by machinations that took place at a level above that of the NPA. Such interference serves to explain why the Simelane matter, as well the bulk of the TRC cases, have not been seriously investigated or prosecuted.
40. In so doing the rule of law has been undermined and a deep injustice has been committed against the family of the late Nokuthula Simelane, as well as the families of other victims of apartheid era crimes.

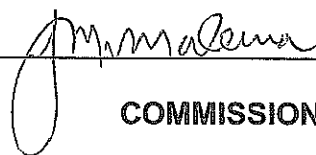
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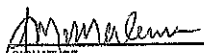
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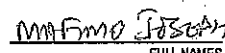
I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at PRETORIA on this the 07th day of MAY 2015 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

"I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of his affidavit, that he/she does not have an objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me and that the administering oath complied with the regulations contained in Government Gazette No. R 1258 of 21 July 1972, as amended



 SIGNATURE
 Commissioner of Oaths


 FULL NAMES

 Designation: Commissioner of Oaths
 Office: Republic of South Africa

 Date: 07/05/2015

 Place: WITBANK Business Address: WITBANK POST OFFICE


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June 24, 1999

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AMNESTY HEARING - WILLEM SCHOON

The Amnesty Committee of the TRC is to hear amnesty applications of Brigadier Willem Schoon - a part heard matter, on the abduction of Nokuthula Simelane, an ANC activist from Swaziland in 1982.

Four applicants, Willem Coetzee, Norman Mkhonza, Frederick Mong, Frederick Williams, Nomrod Veyi, Jacobus Ross with the exception of Lazarus Selamolela have already testified before the committee in May.

Peter Lengene who had applied for amnesty died three months ago. All the seven applicants were members of the Soweto Special Branch Unit under Coetzee.

They are applying for their role in the infiltration and killing of ANC underground activists in Soweto in the early eighties.

The Schoon hearing will take place on June 28, 1999 in Pretoria at the Idasa Center, cnr Visagie and Prinsloo Street.

For more information call Mbulelo Sompeta : 082 452 7870.

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AC/2001/185

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND
RECONCILIATION ACT, NO.34 OF 1995.

W H COETZEE 1ST APPLICANT

(AM4122/96)

A PRETORIUS 2ND APPLICANT

(AM4389/96)

J F WILLIAMS 3RD APPLICANT

(AM4375/96)

J E ROSS 4TH APPLICANT

(AM4377/96)

F B MONG 5TH APPLICANT

(AM4154/96)

N L MKHONZA 6TH APPLICANT

(AM5420/97)

M M VEYI 7TH APPLICANT

(AM5421/97)

M L SELAMOLELA 8TH APPLICANT

(AM5419/97)

DECISION

1. INTRODUCTION

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This is an application for amnesty in terms of the provisions of Section 18 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 ("the Act"). The matter relates to the abduction and subsequent treatment of Ms Nokuthula Aurella Simelane during or about the period August - September 1983. The sequence of events constituting the incident will be set out more fully later in this decision. All of the Applicants were to a greater or lesser extent involved in the incident. They were at all material times members of the Security Branch of the then South African Police attached to the Intelligence Unit stationed at Soweto in the present province of Gauteng. The Applicants fall into two categories in accordance with the extent of their respective participation in the incident. The participation of Applicants Williams, Ross and Mkhonza was limited to the abduction of Ms Simelane while the remainder of the Applicants participated throughout the duration of the incident, except for Veyi who joined in after the abduction. The latter group of Applicants engaged in an internecine war during the course of the hearing which was conducted between two camps. The one camp, consisting of Coetzee, Pretorius and Mong, was represented by Mr Visser and the other camp, consisting of Veyi and Selamolela, was represented by Mr Lamey. All of the Applicants testified in support of the applications. Their versions largely coincided in regard to the abduction of Ms Simelane while the respective versions of the two conflicting camps were mutually destructive in relation to the subsequent treatment of Ms Simelane. The interests of the next-of-kin of Ms Simelane were represented at the hearing by Mr van den Berg who indicated in argument that only the applications of Coetzee, Pretorius and Mong are being opposed. Mr van den Berg presented testimony of Gilbert Thwala in support of the case of the next-of-kin.

It is necessary to set out the material evidence in more detail. The summary of the relevant evidence will commence with the facts which are common cause, followed by the respective conflicting versions of the Applicants involved in the dispute of fact in regard to the treatment of Ms Simelane and will conclude with the version of Mr Thwala.

2. FACTS WHICH ARE COMMON CAUSE

Certain sources attached to the Soweto Intelligence Unit of the Security Police including Mkhonza, had infiltrated the ranks of the African National Congress ("ANC") and its military wing Umkhonto weSizwe ("MK") in Swaziland. The Soweto Intelligence Unit under the command of Coetzee, was alerted by these sources that a meeting was arranged between Mkhonza and an MK member at the Carlton Centre in Johannesburg during or about August - September 1983. Coetzee conveyed this information to the overall commander of the Soweto Security Police, the late Brigadier H Muller. After having considered various options, Muller ordered that the MK member should be abducted with a view to turning the member into an agent of the Security Police. Pursuant to this order, Coetzee gathered a group of Security Police officers, including the Applicants, and prepared them for the operation. On the day of the operation, the group monitored the movements of the MK member with a view to executing the planned abduction. It was only at that stage that it transpired that the MK member was a lady, Ms Simelane. She was young, attractive, soft-spoken and had a slender figure. She had also just completed a degree at the University of Swaziland. In accordance with the plan decided upon by the group of police officers, Mkhonza lured Ms Simelane to the basement of the Carlton Centre where she was apprehended and abducted. Ms Simelane was manhandled, placed in the boot of a police vehicle and transported to the Custodum Flats where the Security Police had an operational office in the cleaner's quarters on the roof of the building. Ms Simelane was left in one of the police vehicles out of sight of the general public. She was subsequently removed to the operational office where she was kept for a few days.

Throughout this period Ms Simelane was interrogated and continuously

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assaulted by a group of Security Police officers. The assaults were of a serious nature and Applicants accepted that this can be equated to torture. All of the Applicants save for Williams, Ross and Mkhonza were to a greater or lesser extent involved in her torture. The latter had ceased their participation in the incident after the abduction was executed at the Carlton Centre. Ms Simelane was subsequently transferred to a secluded premises on a farm in the district of Northam in the present North West Province. Here she was detained for a period of approximately 4 to 5 weeks. The interrogation and torture continued on the farm. The pith of the conflict between the versions of the relevant Applicants concerns the events surrounding the interrogation and torture of Ms Simelane on the farm. The respective versions in this regard will now be set out.

3. VERSION OF COETZEE, PRETORIUS AND MONG

According to these Applicants, the assaults occurred only during the course of the first week of Ms Simelane's detention, whereafter it was effectively terminated apart from the odd occasion when she would be given a slap or a punch in order to secure her continued co-operation. After the first week of detention, Ms Simelane agreed to work as an agent of the Security Police. She gave her full co-operation to Coetzee who was leading the group of police officers. As she was concerned about her safety, Ms Simelane requested Coetzee not to let the black officers in the group know that she was in fact working with the police. This fact was accordingly not conveyed to either Veyi or Selamolela. Ms Simelane furnished information concerning the structures and operations of MK in Swaziland. In order to ensure Ms Simelane's continued credibility with the ANC and MK, certain targets were attacked by the Security Police under false flag operations. These attacks formed part of the orders which Ms Simelane had to convey to MK units inside South Africa. MK would have become suspicious of Ms Simelane should these attacks not have been launched which in turn would have compromised the continued operations of the Security Police agents who had infiltrated MK. Ms Simelane's recruitment occurred over a period of time and was finalised approximately two weeks prior to her departure from the farm. She was registered as an occasional source of the Soweto Security Police to be handled by Coetzee and Pretorius.

During the period of her stay on the farm, Ms Simelane's personal needs such as toiletries, food, clothing and the like were attended to. Throughout this period, her hands and legs were cuffed at night in order to stop her from escaping. After the necessary arrangements were made, steps were taken to return Ms Simelane to Swaziland. Only Coetzee, Pretorius, the late Sergeant Mothiba and one of the Security Police sources were involved in the arrangements concerning the handling of Ms Simelane as a Security Police source. Mothiba and the source eventually transported Ms Simelane to Swaziland. She subsequently failed to keep the pre-arranged appointments with her Security Police handlers. The Security Police never heard of Ms Simelane again. The Applicants vehemently denied that Ms Simelane's torture continued beyond her first week of detention or that she was so badly assaulted over the prolonged period of her detention that she was hardly recognisable towards the end of her stay on the farm. They likewise denied that electric shocks were administered to Ms Simelane during her detention on the farm or that her torture included her being thrown into the dam on the farm. They furthermore strenuously denied that Ms Simelane was killed by the Security Police and her body disposed of after she was removed from the farm.

4. VERSION OF VEYI AND SELAMOLELA

Only Selamolela was involved in the abduction, while both of them were involved in the subsequent detention of Ms Simelane at the Custodum Flats and on the farm in the Northam district. She was completely outnumbered by the members of the Security Police who were all male and physically superior to her. Throughout the period of her detention, Ms Simelane was interrogated and severely assaulted.

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Both the interrogation and the assaults were led by the white officers, particularly Coetzee who was in overall command of the group of Security Police. Ms Simelane never co-operated. Ms Simelane never co-operated with the police neither did she furnish any material information concerning MK as alleged by Coetzee and the other white officers. She persisted with this stance right up to the end of her stay on the farm and there was never any question of her being recruited as an agent of the Security Police. It is due to this attitude, that she was severely assaulted throughout her detention. Towards the end of her stay on the farm, her physical condition had deteriorated to such an extent as a result of the assaults, that she could hardly be recognised. She had great difficulty in walking and her physical condition had generally deteriorated quite badly. According to Selamolela she was also subjected to torture by electric shocks on the farm. She was, moreover, thrown into the dam on the farm. According to Veyi he last saw Ms Simelane lying in the boot of Coetzee's vehicle while she was still cuffed. He was under the impression that Selamolela accompanied him on this occasion. Selamolela on the other hand had no recollection of this incident. To their knowledge, no toiletries, medication or similar personal items were furnished to Ms Simelane during her detention on the farm. She was in fact dressed in a brown police overall throughout this period. They disputed the version of Coetzee and the other white officers that the information furnished by Ms Simelane led to the false flag attacks on the electrical power stations or was instrumental in the arrest of a number of persons linked to MK. Despite the sustained assaults and the other attempts to recruit her, Ms Simelane remained unco-operative to the end. According to Veyi, Mothiba informed him that Coetzee and Pretorius were involved in the subsequent killing of Ms Simelane and the disposal of her body.

5. VERSION OF GILBERT THWALA

At all material times he was the chief of staff of the Transvaal Urban Machinery of MK and was based in Swaziland. During 1982, Ms Simelane joined his unit and she was operating as a courier for one of the MK units within the Transvaal Urban Machinery. During September 1983, he deployed Ms Simelane on a mission to make contact with one of the other MK units within the Transvaal Urban Machinery at the Carlton Centre in Johannesburg. He had previously made the necessary arrangements with a member of that unit for the meeting with Ms Simelane. The arrangement was in fact that Ms Simelane would collect certain written arrangements in regard to lines of communication between the relevant MK unit and the MK command in Swaziland. She was only given the necessary information to enable her to complete the mission. She was specifically never given any information concerning the membership of the unit or in regard to operational issues such as the location of arms caches or targets for attack. After the necessary logistical arrangements had been made, Ms Simelane was briefed on the mission a few days before her actual departure from Swaziland for South Africa. Arrangements were made for her to be accommodated by an MK member, one Duma Nkosi.

She left Swaziland around the 8th September 1983 and the meeting at the Carlton Centre was arranged for Saturday, 11th September 1983. The arrangement was that Ms Simelane would communicate with him after the meeting at the Carlton Centre on the Saturday. By the Saturday evening, when Ms Simelane had not yet made contact with him, he realised that there was a problem. He made telephonic contact with Duma Nkosi and established that Ms Simelane had failed to return home after having left for a meeting in the morning. It transpired that Ms Simelane's clothing and other possessions were still at the home of Mr Nkosi. He also telephoned Ms Simelane's home to enquire whether she was possibly there. Her relatives indicated that to their knowledge, Ms Simelane was still in Swaziland and were surprised to hear that she would be collecting some items from home that she needed for the purposes of her imminent graduation. By the following evening, he realised that Ms Simelane had disappeared and he instituted the necessary precautions to ensure that the MK units or their operations would not be

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compromised by the disappearance of Ms Simelane. He ordered the MK unit to which Ms Simelane was attached as well as the unit of Mr Nkosi to immediately cease all operations until further notice. Steps were also taken in Swaziland to secure the MK premises which were known to Ms Simelane. He again communicated with Ms Simelane's family and indicated to them that she seemed to have disappeared in Johannesburg.

He denied that Ms Simelane had anything to do with the arrest of approximately 18 MK members during 1984. He indicated that apart from one member of the group that was arrested, Ms Simelane had never met any of the other arrestees and had no basis of possibly knowing that they were members of MK. He had taken steps to resolve the mystery surrounding the disappearance of Ms Simelane. He indicated that although he accepted, as one of the possibilities, that she was arrested by the South African Security Police he was puzzled by the fact that no action was taken by the latter against any of the units or the MK premises in Swaziland that were known to Ms Simelane. He had never seen Ms Simelane since her departure for South Africa and emphatically denied the suggestion that Ms Simelane was killed by MK after she was placed back in Swaziland by the Security Police. He indicated that if Ms Simelane had in fact returned to the ANC structures or MK in exile he would have been apprised of that fact and would have been central in any possible MK or ANC investigation into the situation of Ms Simelane.

6. EVALUATION OF THE EVIDENCE

It is apparent from a conspectus of the respective versions that the material matters in issue are :

- 6.1 The duration of Ms Simelane's torture;
- 6.2 Whether Ms Simelane co-operated with the Security Police and was recruited by them;
- 6.3 Ms Simelane's physical condition towards the end of her stay on the farm;
- 6.4 Ms Simelane's fate subsequent to having been removed from the farm.

Having carefully considered the matter, we are satisfied that in spite of some discrepancies in their versions, the evidence of Veyi and Selamolela is basically truthful. They have both made a very favourable impression upon us and their testimony has struck us as honest as well as a genuine attempt to convey all of the facts and circumstances concerning the incident to the best of their ability. We bear in mind that they have been called upon to recount events that occurred a very long time ago and in which they did not play a leading role. In the case of Selamolela he had to contend with the additional disadvantage of suffering from the effects of post-traumatic stress syndrome which, according to the medical evidence placed at our disposal, negatively affected his memory. There is, in our view, no merit in the submission made on behalf of Coetzee and the other white Applicants that Veyi and Selamolela adopted a hostile position towards their white superiors and were actuated by a desire to put the latter in as bad a light as possible while minimizing their own role in the incident. It is common cause that they made a public disclosure of the circumstances surrounding the Simelane incident after her disappearance was highlighted in a prominent article in the Sowetan newspaper. They subsequently made statements to the then Attorney-General of the Transvaal which were basically consistent with their versions at the amnesty hearing. These statements were deposed to prior to the date on which the first amnesty applications were made in respect of the Simelane incident and at a time when they

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had no indication whether or not on what basis any of their superiors may apply for amnesty.

There can be no doubt, in our view, that their principal motivation was to make a full disclosure of the entire incident and to lift the burden of guilt that they were carrying concerning their own role in what they experienced as an unwarranted and unjustifiable invasion of the basic human rights of Ms Simelane. It is inexplicable why they should falsely exaggerate the duration of Ms Simelane's torture when they have confessed their own complicity in that torture. We find it highly improbable that they would implicate themselves in an offence, the severity of which they falsely exaggerate.

We have not been similarly favourably impressed by the versions of either Coetzee, Pretorius or Mong. We have no doubt, that they have made common cause and orchestrated their testimony in an attempt to minimize their roles in the torture of Ms Simelane. They were evasive and resorted to prevarication and long-winded technical explanations whenever they sensed difficulties or shortcomings in their versions. They studiously failed to furnish direct answers to questions which they regarded as potentially damaging to their case. The record speaks for itself in this regard. Moreover, various aspects of their versions are inherently improbable. They failed to furnish a reasonable or acceptable explanation for the fact that Ms Simelane was kept in foot cuffs throughout the period of her stay on the farm in spite of having allegedly agreed to become a police informer. Their explanation that this was done as a precaution against Ms Simelane possibly fleeing, contradicts the allegation that she had in fact been recruited and registered as a police informer while staying on the farm. It is, furthermore, inherently improbable that they would have continued detaining Ms Simelane under primitive and extremely adverse conditions on a remote farm in the bushveld at a time when they in fact had her full co-operation as a newly recruited informer. The probabilities in this regard instead favour the version of Veyi and Selamolela that she was held under these circumstances and continuously assaulted precisely because of the fact that she had refused to co-operate with the police. The version that, on Ms Simelane's insistence, the fact of her recruitment was kept secret from the black members is, in our view, a clever but unpersuasive attempt to neutralise the effect of the contrary version of Veyi and Selamolela. It is beyond the realm of belief that Coetzee and the other white officers could keep up this facade for approximately one month on the farm while at the same time somehow managing to involve Mothiba in Ms Simelane's recruitment without raising the suspicion of the remaining black members. On the totality of the evidence before us, we have no doubt that the versions of Coetzee, Pretorius and Mong are untruthful where they conflict with those of Veyi and Selamolela on the issues in dispute. We are not persuaded that the criticisms levelled at the versions of Veyi and Selamolela in the argument submitted on behalf of Coetzee, Pretorius and Mong affect those versions in any material way even less does it warrant the total rejection of those versions.

Insofar as the evidence of Mr Gilbert Thwala is concerned, we are satisfied that his version is honest and truthful. We are not persuaded that the rancour that developed during cross-examination between Mr Thwala and Mr Visser is indicative of or only explicable on the basis of mendacity on the part of Mr Thwala. This factor does not detract from the gravamen of that version which in broad terms corroborate the evidence of Veyi and Selamolela that Ms Simelane never co-operated or furnished any material information to the police. It, moreover, constitutes a compelling basis for the conclusion that Ms Simelane never returned to Swaziland after she was abducted by the Security Police.

7. FINDINGS

In the circumstances, we are satisfied that Ms Simelane was abducted by

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members of the South African Security Police, including some of the Applicants, acting under the command of Coetzee on or about Saturday, 11 September 1983 at the Carlton Centre, Johannesburg. During her subsequent detention for a period of approximately five weeks, she was continuously and very seriously assaulted by the group of Security Police, under the command of Coetzee, who held her captive. All attempts to extract information concerning MK or its operations as well as attempts to recruit her to become a Security Police informer, were fruitless. Due to the prolonged and sustained assaults, Ms Simelane's physical condition deteriorated to the extent that she was hardly recognisable and could barely walk. Ms Simelane was last seen where she was lying with her hands and feet cuffed in the boot of Coetzee's vehicle. She never returned to her familiar environment in Swaziland after having been abducted by the South African Security Police and had disappeared since. It is not necessary for the purpose of this matter to make a definitive finding on the eventual fate of Ms Simelane.

8. CONCLUSION

The abduction and subsequent situation of Ms Simelane will be dealt with separately.

8.1 Abduction

It is not in contention that the abduction of Ms Simelane was duly authorised by the then commander of the Soweto Security Branch. The facts and circumstances relating to this incident have been fully disclosed. The operation was directly linked to the political struggle being waged at the time against the ANC or MK which were regarded as the political enemies of the South African State and its Security Forces. We are accordingly satisfied that this incident constitutes an act associated with a political objective as envisaged by the Act. Amnesty is accordingly GRANTED to all of the Applicants, save for Veyi who was not involved, in respect of all offences or delicts arising from the abduction of Ms Simelane on or about Saturday 11 September 1983 at or near the Carlton Centre, Johannesburg. We have considered the position of Mkhonza and are satisfied that his actions contributed directly to the unlawful abduction. He is accordingly also entitled to amnesty in spite of the fact that he was under the initial impression that Ms Simelane would be lawfully arrested.

8.2 Torture

In the light of what is set out above, we conclude that the evidence of Coetzee, Pretorius and Mong is untruthful insofar as it concerns the duration and extent of Ms Simelane's torture whilst she was in the custody of the Security Police, especially on the farm. Coetzee, Pretorius and Mong have accordingly failed to make a full disclosure of all relevant facts in regard to this aspect of the matter as required by the provisions of Section 20 of the Act. Their applications are accordingly REFUSED on this aspect.

Insofar as the applications of Veyi and Selamolela are concerned, we are satisfied that they have made a full disclosure of all relevant facts. At all material times they were acting on the orders of their commander, Coetzee, who informed them that Ms Simelane was a member of MK. Their actions were accordingly directed against a perceived political enemy and as such constitute acts associated with a political objective as envisaged by the Act. Their applications accordingly comply with all of the requirements of the Act. In the circumstances, amnesty is hereby GRANTED to the Applicants Veyi and Selamolela in respect of all offences and delicts arising from the torture of Ms Simelane subsequent to her abduction as set out above.

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In our opinion Ms Nokuthula Aurella Simelane, alternatively her next-of-kin are victims in respect of the incidents for which amnesty is hereby granted and the matter is accordingly referred for consideration in terms of the provisions of Section 22 of the Act.

DATED AT CAPE TOWN THIS 23RD DAY OF MAY 2001

DENZIL POTGIETER, A-J

A-J CHRIS DE JAGER, A-J

ADV L GCABASHE

AC/2001/185

TRUTH AND RECONCILIATION COMMISSION

AMNESTY COMMITTEE

APPLICATION IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND RECONCILIATION ACT, NO.34 OF 1995.

W H COETZEE 1ST APPLICANT

(AM4122/96)

A PRETORIUS 2ND APPLICANT

(AM4389/96)

J F WILLIAMS 3RD APPLICANT

(AM4375/96)

J E ROSS 4TH APPLICANT

(AM4377/96)

F B MONG 5TH APPLICANT

(AM4154/96)

N L MKHONZA 6TH APPLICANT

(AM5420/97)

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M M VEYI 7TH APPLICANT

(AM5421/97)

M L SELAMOLELA 8TH APPLICANT

(AM5419/97)

A D D E N D U M

I agree with the result but do not agree with some aspects and conclusions in paragraph 6 above. The Applicants Coetzee, Pretorius and Mong did not satisfy me that they've made a full disclosure of all relevant facts.

CHRIS DE JAGER, A-J

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