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 Date

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tim.smit@cdhlegal.com
 8 May 2020

Attention: Ms Shamila Batohi; Mr. Chris Macadam
 By Email: sbatohi@npa.gov.za;
CMacadam@npa.gov.za; and
NMonageng@npa.gov.za.

Dear Ms Batohi and Mr. Macadam,

MURDER OF THE CRADOCK 4

- 1 We thank you, Mr. Macadam, for your letter of 20 April 2020. In light of the fact that we –
 - 1.1 have been instructed to place the NPA on terms in this matter, this letter is also addressed to the National Director of Public Prosecutions; and
 - 1.2 will be obliged to join the South African Police Service in any such proceedings, the National Head of the Directorate for Priority Crime Investigation, General S G Lebeya, is copied.
- 2 For ease of reference, we attach our letter to Mr Macadam dated 20 April 2020, Mr Macadam's letter in response of 20 April 2020 and Brigadier Xaba's letter of 23 April 2020.
- 3 We have been instructed to respond to certain paragraphs of Mr Macadam's letter. Our failure to respond to any assertion should not be construed as our acceptance thereof.
- 4 In response to Mr Macadam's letter, we are instructed as follows –
 - 4.1 in respect of paragraph 2, the suggestion by Mr Macadam that a decision in relation to the Cradock 4 matter can only be made once the Mthimkulu, Motherwell and PEPCO 3 cases have been fully investigated, is not acceptable. In the first place, there is no prospect of a joinder of trials, and secondly it is evident that those cases have not been given the priority and attention that they deserved over the last two decades. If we were to wait until all the investigations are complete, we are likely to have to wait several more years, if past practice is anything to go by. In the intervening period, suspects and

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witnesses are likely to die by the time any decision is made. This will naturally defeat the interests of justice. In the circumstances, our clients regard this approach as a further delaying tactic;

- 4.2 we have reviewed all of the information that we have provided to the NPA and SAPS, which was utilized to reconstruct the missing docket, and we are of the respectful view that there is sufficient evidence on hand to make a decision whether or not to prosecute the remaining suspects;
- 4.3 we note from paragraphs 4 and 12 of Mr Macadam's letter, that the new nodal point in the Eastern Cape is Advocate Nico Henning. Please advise who was the previous nodal point in the Eastern Cape who decided to leave the NPA at short notice at the end of March because the DPCI did not commence the Cradock 4 investigation;
- 4.4 with regard to paragraph 5, we do not see any reason why the investigation of the Cradock 4 matter should be delayed pending the appointment of a former TRC researcher, especially when we have already provided the available archived material (bar that which is contained in the National Archives) to you and your team;
- 4.5 in respect of the missing docket, which is dealt with in paragraphs 6 and 7, we point out that the losing, removal or concealing of a docket is a very serious matter, if not a serious criminal offence. Our client is of the view that a docket in a case of this national significance that disappears is indication of an ongoing cover-up and obstruction of justice. Please advise whether a formal investigation has been opened regarding the missing docket, and if so, please advise of any progress. Please also provide the case or reference number of such investigation. If no investigation has been launched please advise why not;
- 4.6 we agree that the disappearance of the docket is no excuse for not continuing the investigation, but it appears that is precisely what happened. It appears from paragraph 7 of Mr Macadam's letter that the docket has still not been reconstructed. If the docket contained nothing more than extracts from the inquest/amnesty proceedings, why is it only now being reconstructed, given that it was known, at least by our September meeting of last year, that it was missing? Indeed, it appears that the docket may have gone missing as far back as 2018. In our respectful view, this is further evidence of wilful delay or obstruction in this matter;
- 4.7 in relation to paragraph 8, we point out that the Legal Resources Centre's copy of the full record of the Zietsman Inquest is located at the Wits University Historical Papers in Johannesburg;
- 4.8 regarding paragraphs 13 and 14, we respectfully cannot accept that any delays in this matter are attributable to the lockdown and associated restrictions. There was no progress in this matter prior to the lockdown and indeed no discernible progress since the winding up of the Zietsman inquest in 1994, some 26 years ago; and
- 4.9 we respectfully take exception to the excuse set out in paragraph 15 that more pressing matters are at hand and that the DPCI is also extremely constrained. There will always be matters that are perceived to be more important and indeed Mr Macadam and his office have advised of such pressing cases over many years. Indeed, we have come to the regrettable conclusion that it will always be claimed that there are more important cases in the files of the PCLU and DPCI that must take precedence over cases such as the Cradock 4. If this claim was acceptable it would justify an *ad infinitum* delay – notwithstanding the fact that this crime is 35 years old and suspects, witnesses and families are elderly and dying.

5 Turning to Brigadier Xaba's letter of 23 April 2020, more specifically the final paragraph of that letter, read together with paragraph 12 of Mr Macadam's letter, it is unclear why Advocate Nico Henning cannot be briefed electronically with the documents, especially since all of the documents that we have provided are in electronic format. Further, it is unclear why Mr Macadam cannot discuss the matter with Advocate Henning via telephone or videoconference. Given the technology available, there is no reason why Advocate Henning cannot be briefed immediately. The only possible conclusion that can be drawn from the list of rationalisations in your letter is that the NPA does not regard the prosecution of Apartheid crimes for which no amnesty was granted as either pressing or urgent.

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8 May 2020
Murder of the Cradock 4

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6 The opportunity to hold anyone accountable for one of the most notorious crimes committed in South Africa's history fades with each passing day. In the circumstances, we are instructed to demand that a decision be made whether to prosecute the known suspects in the murder of the Cradock 4. Should we not receive your decision by close of business on **Friday, 10 July 2020**, we will have no realistic alternative but to launch proceedings in the High Court to compel a decision.

Yours sincerely

TIM FLETCHER / TIM SMIT
CLIFFE DEKKER HOFMEYR INC

Copied to:

Adv. Nico Henning – nhenning@npa.gov.za
General S G Lebeya – LebeyaSG@saps.gov.za
Brigadier N Xaba – XabaN@saps.gov.za
Colonel Makua – MakuaJ@saps.gov.za

¹ <http://historicalpapers-atom.wits.ac.za/inquest-into-the-death-of-matthew-goniwe-fort-calata-sparrow-mkhonto-and-sicelo-mhlauli-the-cradock-four-ca-high-court-case-no-626-87>

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Date	22 June 2020

Attention: Advocate R De Kock
By Email: ematzke@npa.gov.za

Copied to: Acting Director of Public Prosecutions (Grahamstown): imsakata@npa.gov.za
Colonel Makua: MakuaJ@saps.gov.za

Dear Sirs

RE: THE INVESTIGATION & PROSECUTION OF THE MURDERERS OF THE CRADOCK FOUR

- 1 Thank you for your letter of 22 May 2020 and your confirmation that the reconstructed case docket has been electronically forwarded to the Acting Director of Public Prosecutions, Grahamstown for "further management and decision".
- 2 We are now fast approaching the 35th anniversary of the murder of the Cradock Four; which date, we fear, is likely to be remembered as yet another anniversary of impunity for the killers of these four young activists.
- 3 We have yet to hear from the NPA and/or its anti-corruption investigation unit as to what happened to the missing docket in this matter. It appears that the original docket somehow vanished while in the hands of some of the highest office bearers at the NPA. Please would you revert to us in this regard as it appears that nothing has been done in relation to the disappearance of the original docket between September 2019 and June 2020.
- 4 We are grateful that you have requested General Lebeya of the DPCI to prioritise and urgently investigate the matter. Given that Brigadier Marion ("Marion") has already done considerable work on this case (as well as the Pebco 3) we suggest that he meets with the investigating officer and the assigned prosecutor in order to take them through the chronologies and relevant documentation in these cases. In this regard, we are pleased to hear that on Friday afternoon Colonel Makua contacted

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Marion and they are due to meet this coming week. Please advise when we can arrange a similar meeting with assigned prosecutor.

- 5 We still do not know which prosecutor has been assigned this case and we would be grateful if you would provide us his or her details as soon as possible.
- 6 We must advise that our client, Lukhanyo Calata, has reached the end of his tether. He was 3 years old when his father was murdered and almost 35 years later, notwithstanding admissions made by various perpetrators and damning documentary evidence, there has been absolutely no progress in this case. We are constrained to remind you that we placed the NDPP on terms in this matter on 8 May and our client's instructions stand that should the NPA not make a decision by **Friday, 10 July 2020**, we will proceed to institute legal proceedings to compel a decision.

Yours faithfully


TIM SMIT
CLIFFE DEKKER HOFMEYR INC

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Priority Crimes Litigation Unit



The National Prosecuting Authority
South Africa

Cliffe Dekker Hofmeyr
JOHANNESBURG

20 April 2020

ATTENTION: Tim Smit
E-mail: Tim.smith@cdhlegal.com

INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

1. I acknowledge receipt of your letter with reference T S Fletcher/T P Smit dated 20 April 2020 and respond as follows.
2. At our meeting of September 2019, I indicated that the Mthimkulu, PEPCO 3 and Cradock 4 matters should be investigated collectively as they involve essentially the same group of perpetrators. I also referred to the fact that the Motherwell bombing case was also relevant in that the deceased were killed to prevent them revealing their involvement in the Cradock 4 matter. In the Mthimkulu matter all the perpetrators have been granted amnesty but no inquest had been held, nor a prosecution instituted. In the PEPCO 3 matter, the investigation had yet to be concluded, but the indications were that the persons who refused amnesty were all deceased. My view was that the decision in the Cradock 4 matter should be made once everything had been investigated.
3. Subsequent to that meeting Ms de Bruyn did provide feedback to Cliff Marion on the issues raised by him. I have been copied on the email which her supervisor forwarded to you today.

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INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

4. After our meeting the matter was brought to the attention of our nodal point in the Eastern Cape, who indicated that he would personally attend to the matter as he had appeared as counsel in both the Cradock 4 and Motherwell cases.
5. Meetings were held with the researchers to identify all the outstanding material located in public and private archives. At our last meeting we decided to offer a contract employment to a former TRC researcher who had extensively worked on the State Security Council and was ideally based to do the dedicated research which was necessary. She had indicated her willingness to work for us, but due to the lockdown activities, her appointment has not been able to be taken further through our strict procurement processes.
6. Further efforts were made through the Head of our Prosecution Service to locate the missing docket as it was called for by a previous incumbent of his office. This failed to locate the docket. The disappearance of this docket is in fact no excuse for not continuing with the investigation. I am extremely concerned about the remarks attributed to the investigator in paragraph 4 of your letter and am taking this matter up with his commanding officer.
7. The docket contained nothing more than the relevant extracts of the last Goniwe inquest as well as the amnesty proceedings. These records are easily re-obtainable. In fact, I personally handed the investigating officer the judgment of the amnesty committee as well as the heads of argument which were filed in the Goniwe inquest and other relevant documentation (these documents identified the relevant role players and could easily be used to reconstruct the docket).
8. My office contacted Rhodes University in order to purchase an electronic copy of the inquest record in its possession. The University raised an issue regarding compliance with our procurement policies. We were in the process of resolving this issue. In addition we established that certain records were available in a provincial archive, but only in hard copy form. The archive lacks the capacity to convert the documents to an electronic format which would have necessitated one of our researchers having to travel to the Eastern Cape to physically peruse the documents and make copies of those deemed to be relevant. Our researcher

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INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

also obtained a copy of the book published by Chris Nicholson to extract relevant information.

9. Unfortunately a major stumbling block was encountered due to a lack of buy-in from the DPCI which is responsible for the investigation of the case. This is not limited to this case, but relates to all the numerous other TRC matters.
10. Attempts at my level to get a proper buy-in failed to produce positive outcomes, resulting in the escalating the matter to the NDPP and then Head NPS.
11. This resulted in a meeting between us and the Head DPCI on the 31st of January 2020 where I tabled my concerns. The Head DPCI undertook to seek approval to appoint former members who had TRC experience on a contract basis. He was provided by myself with a list of ex-police officers who were willing to do the work. I also wrote to the commanding officer expressing my concerns about TRC cases and requesting him to consider having investigators working full time on these matters and not having to accommodate them in between their other investigations. I had no response to this letter which was preceded by a lengthy meeting between myself and him.
12. I would have again escalated the position with the DPCI had it not been for the lockdown. A consequence of the DPCI not having commenced the investigation was that our nodal point decided at short notice to leave the NPA at the end of March 2020. A new nodal point has been appointed, but due to the lockdown I have not been able to brief him fully on the matters that he must take over. There are several matters over and above those mentioned here.
13. Unfortunately it is extremely difficult to give proper attention to these matters at the present time. Although I am every day at the office, because I have to attend to state security and management issues the majority of role players are not able to report for duty complicating engagements with them. I have been advised that the DPCI are also extremely constrained in what investigations they can currently conduct.

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INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

14. I am taking the issue of investigations up with the Unit Commander and will revert to you as soon as I receive a response. However, it is anticipated that proper attention to the cases will only be able to commence once the current restrictions are lifted.
15. I apologise for being amiss in not communicating further with you after our meeting. I did however have telephonic discussions with Cliff Marion and was unfortunately from October 2019 to January 2020 fully occupied with addressing extremely serious international matters as well as having to take urgent action regarding a terrorist organization that was on the point of carrying out a terrorist attack on the country.

Regards



ADV CHRIS MACADAM
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
HEAD: PRIORITY CRIMES LITIGATION UNIT

DATE: 20 April 2020

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Privaatsak/Private Bag X 1500, SILVERTON

Reference	CATS 05/06/2016
Enquiries	Brig N Xaba Col MS Mahlangu
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**SECTION HEAD
CRIMES AGAINST THE STATE AND TOMS
SERIOUS ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
SILVERTON**

The Acting Special Director
Priority Crime Litigation Unit
National Prosecuting Authority
HEAD OFFICE

INVESTIGATION INTO THE MURDER OF CRADOCK 4: CATS CAS 05/06/2016

Your email dated 20 April 2020 refers.

The Investigating Officer visited the families of Cradock 4 in Eastern Cape to appraise them about the investigation on the 19 to 22 March 2019.

The investigator also visited the King Williamstown State archives to look for Inquest transcripts and other documentation that could further the investigation.

Hence the docket was reported missing in the offices of the National Prosecuting Authority, Silverton, the Investigator reconstructed the new docket.

The docket is fully reconstructed with the help of former Brigadier Marion who is employed by the Human Rights Foundation.

All the relevant information has been gathered and the docket file will be presented before Advocate Nico Henning of Grahamstown DPP's office for perusal and guidance after the lockdown.


BRIGADIER
**SECTION HEAD: CRIMES AGAINST THE STATE AND TOMS
SERIOUS ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
N XABA**

Date: 2020/04/23

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Date	5 September 2019

Attention: Mr Chris Macadam and Ms Shamila Batohi
 By Email: cmacadam@npa.gov.za
SBatohi@npa.gov.za

Dear Mr Macadam and Ms Batohi

INVESTIGATION INTO THE MURDER OF THE CRADOCK 4: SWARTSKOP CR 13/07/1985: FOUNDATION FOR HUMAN RIGHTS PROJECT 10698

- 1 We act for Mr. Lukhanya Calata and the Calata family.
- 2 Our clients have instructed us to investigate the deaths of Fort Calata, Matthew Goniwe, Sparrow Mkhonto and Sicelo Mhlauli ("the Cradock 4").
- 3 We have conducted a preliminary investigation and perused the TRC Amnesty applications. From that investigation, we have established that the aspects listed in the below activity sheet ought to be investigated.
- 4 We have not yet been able to meet with the Directorate for Priority Crime Investigation ("DPCI") to discuss the investigation and would be grateful if you could arrange a meeting with the investigating officer, yourselves and our team as soon as possible (preferably within the next 2 weeks).
- 5 Whilst we await your response regarding the requested meeting, please would you consider the activity sheet below and advise which aspects have already been investigated and addressed, as we would like to avoid duplicating investigative efforts.
- 6 We also enclose a list of exhibits required for the investigation and would be grateful if you could assist us in obtaining these.

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*British & Dutch *Cape Town Managing Partner *Business Development Director

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- 7 We would be grateful to receive your feedback by as soon as possible, preferably by 9 September 2019, so that we can report back to our clients.
- 8 Your assistance is greatly appreciated.

Yours sincerely


TIM FLETCHER / TIM SMIT
CLIFFE DEKKER HOFMEYR INC

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Attachments to Annex LC47
Activity sheet supplied to DPCI / NPA
Proposed exhibits supplied to DPCI / NPA

Removed because of privileged contents



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20 April 2020

Attention: Mr. Chris Macadam
By Email: CMacadam@npa.gov.za
SBatohi@npa.gov.za

Dear Mr. Macadam

INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

- 1 As you know, we act for Mr. Lukhanyo Calata ("Mr. Calata") and the Calata family. We are also in the process of engaging Mrs. Mhau and Mrs. Mrs Mkhonto as our clients.
- 2 For the purposes of this letter, we need to first set out the relevant chronology of events that has led to us being compelled to address this letter to you –
- 2.1 On 5 September 2019, we addressed a letter to both you and Ms. Batohi, in which letter we recorded, *inter alia*, that we –
 - 2.1.1 had conducted a preliminary investigation (including a review of the relevant TRC applications) in regard to the deaths of Fort Calata, Matthew Goniwe, Sparrow Mkhonto and Sicelo Mhau ("the Cradock 4"); and
 - 2.1.2 were of the view that further investigations were required in relation to the murders of the Cradock 4.
- 2.2 Pursuant to that letter, you invited us to meet with you at your offices at 123 Westlake Street, Weavind Park, Pretoria on 12 September 2019.
- 2.3 We met with you and your team (Marthi Alberts ("Alberts") and Zelda de Bruyn ("de Bruyn")) on 12 September 2020, during which meeting you advised us that –

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CONSULTANTS: A Abercrombie JMA Eyerhuis Prof A Govindjee JH Jacobs EJ Kingdon FF Kolbe M Kraus Q Moeletsi S Naidoo S Parbhoo C Pepermans J Sweet H Vrey

SENIOR ASSOCIATES: S Adams RS Alho KF Anderson A Bezuidenhout KA Biddulph C Bodenstein JL Botha JJ Brink CF Brockman JC Cameron LY Coffee E Cornelius BP Cripps N Dhana DV Durand C Dutilleux T Erasmus NK Fletcher RA Geswindt AJ Gillam A Govuza B Hayath GT Howard SJ Jamieson TC Jegals SM Kelly N Loopoo AW MacPherson MP Manaka B Mangale V Manku S Mcelywa N Mia V Moodley VV Murray J Naidoo Z Ngakane VT Ngcobo BS Nhlapo AL Persira J Roberts J Strydom KB Tshabanelo YA van Leeve M Werner ER West K Weyers CA Wood.

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2.3.1 you had invited the investigating officer ("the IO") from the Directorate for Priority Crime Investigation ("DPCI") to the meeting but that your invitation had been declined as the IO was too busy to attend;

2.3.2 you had raised your concerns with the DPCI in regard to their approach of wanting to investigate murders that had occurred in other provinces (such as the Eastern Cape in the case of the Cradock 4) from a unit based in Pretoria, but that you had been assured that a local investigator from the relevant region would be appointed to investigate with oversight being maintained by the DPCI;

2.3.3 the dockets of the apartheid era murders would be sent to the relevant regions and that you had been provided with an undertaking from the DPCI that you would be provided with a list of people who had been assigned to investigate matters, including the Cradock 4 matter;

2.3.4 the original docket in the Cradock 4 matter had been "removed" and could not be located and that the anti-corruption unit was investigating the disappearance of the original docket; and

2.3.5 between our team, which included retired Brigadier Clifford Marion ("Marion"), and your team of researchers, we could put the entire picture together for the DPCI and put the ball back into their court.

2.4 It was agreed at the aforementioned meeting that we (particularly Marion) would share all of the documentation and evidence that had been collected with you and your team in order to put together a new docket for the DPCI.

2.5 Following on from that meeting, on 13 September 2019, Marion sent an email to Alberts and de Bruyn in which, *inter alia*, Marion had requested information as to which of the individuals referred to in the email were alive or dead.

2.6 On 18 September 2019, Marion provided you, Alberts and de Bruyn with a copy of the confession made by Eric Taylor in relation to the murder of the Cradock 4.

2.7 On 3 October 2019, Marion requested an update from Alberts and de Bruyn in relation to his email of 13 September 2019, to which, to date, he has not received a response.

2.8 Marion provided you and your research team (in a 12-part email chain) with all of the information and documentation referenced in the attached "Exhibits List", which information and documentation had been sourced from various sources in relation to the murders of the Cradock 4.

3 Notwithstanding all of the aforementioned efforts on our part, particularly those of Marion, which efforts included providing you with the necessary documents to continue the investigation and a recommendation to prosecute certain individuals, we have yet to hear from you as to whether you will be instituting prosecutions into the murders of the Cradock 4.

4 In addition to your silence and the delays experienced in the investigation and prosecution, and most concerningly, our client, Mr. Calata, recently received a telephone call from the investigating officer, Colonel Joe Makua, who advised our client that despite the fact that he wanted to continue with the investigation of the murders of the Cradock 4, he could not do so because you had advised him that the docket had been taken by an unidentified individual and could not be located.

5 Given the extent of our efforts, we do hope that the statements made by the investigating officer are nothing more than a misunderstanding, but given the continued extensive delays experienced by our clients in attempting to have justice served, we must demand answers to our below questions as a matter of urgency –

5.1 What progress has been made in the investigation of the murders of the Cradock 4 since our meeting of 12 September 2019?

5.2 What is the status of the original docket?

5.3 To the extent that the position remains that the original docket cannot be located, what is the status of the reconstructed docket?

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5.4 Are you in possession of any of the original signed statements and/or documents?

6 We hope to maintain the excellent working relationship that we have established with you and we remain hopeful that we can advance the matter of the investigation and prosecution of those responsible for the murders of the Cradock 4 as a matter of urgency, but with each passing day, the opportunity to hold anyone accountable fades, especially when considering the age of those implicated. Accordingly, to the extent that we do not hear from you on or before the close of business on **Friday, 24 April 2020**, we will have no alternative but to address urgent correspondence to Ms. Batohi in regard to this matter.

Yours sincerely

TIM SMIT
CLIFFE DEKKER HOFMEYR INC

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Acting Director of Public Prosecutions

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Direct Line	+27 11 562 1085 / 1061
Direct Telefax	+27 11 562 1329 / 1661
Direct Email	tim.fletcher@cdhlegal.com / tim.smit@cdhlegal.com
Date	13 August 2020

Attention: Mr. LM Sakata

By Email: lmsakata@npa.gov.za

Dear Mr Sakata

THE INVESTIGATION AND PROSECUTION OF THE MURDERERS OF THE CRADOCK FOUR

- 1 Thank you for meeting with us (albeit virtually) on 6 August 2020.
- 2 The discussions held during the meeting are very promising and we look forward to working with you, the National Prosecution Authority ("NPA") and the investigative team of the Directorate for Priority Crime Investigation to advance the investigation and ultimately pursue the prosecution of the murderers of the Cradock Four.
- 3 During our meeting, one of the items that was discussed was the investigation in regard to the inexplicable disappearance of the original docket. You indicated to us that you intend to send correspondence to the NPA to demand a response as to whether there has been an investigation into the missing docket and if so, to determine what the outcome of that investigation was.
- 4 In the spirit of our newly formed collaborative efforts to seek justice for the families of the Cradock Four, we kindly request that you provide us with a copy of the correspondence that you have sent or intend to send to the NPA, as well as with a copy of the response that is received.
- 5 We look forward to hearing from you.

Yours sincerely

TIM FLETCHER / TIM SMIT
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4 October 2020

National Commissioner of the Police
Lieutenant General Khehla John Sithole

Attention: General Bheki Cele
Lieutenant General Khehla John Sithole

By Email: GaehlerSMK@saps.gov.za
sitholek@saps.gov.za

Dear Sirs

REFUSAL BY SAPS TO OPEN A CRIMINAL CASE INTO THE MISSING CRADOCK FOUR DOCKET

- 1 We act for Mr. Lukhanyo Calata. Our client is the son of the late Fort Calata, who was brutally murdered, along with Matthew Goniwe, Sparrow Mkhonto and Sicelo Mhlauli (the "Cradock 4") by members of the Security Branch of the erstwhile South African Police on 27 June 1985.
- 2 We have on record the following Crime Register (CR) numbers pertaining to the Cradock 4:
 - 2.1 KwaZakele CR 373/06/1985 – Body of Mathew Goniwe – Murder;
 - 2.2 KwaZakele CR 212/06/1985 – Suspected to be the burnt-out Honda Ballard;
 - 2.3 Swartkops CR 12/07/1985 – Body of Sicelo Mhlauli – Murder;
 - 2.4 Swartkops CR 13/07/1985 - Body of Sparrow Mkhonto – Murder; and
 - 2.5 Swartkops CR 140/06/1985 – Body of Fort Calata- Murder.
- 3 Notwithstanding that two inquests were held in 1987 and 1992, the making of findings by the Truth and Reconciliation Commission ("TRC"), and the denial of amnesty to most of the perpetrators, nobody has been held criminally accountable for the murders of the Cradock 4 – more than 35 years after their murder.
- 4 We are aware that a criminal docket was previously opened in relation to the murders of the Cradock 4, but that the original docket has "gone missing" perhaps as far back as 2018, or earlier.

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5 During a meeting held at the head office of the National Prosecuting Authority ("NPA") on 12 September 2019 to discuss the status of the investigation, Advocate Chris Macadam ("Adv. Macadam") (the Acting Special Director of Public Prosecutions) advised us that the original investigation docket had been removed from the offices of the NPA and could not be located.

6 In a letter sent by Adv. Macadam of the Priority Crimes Litigation Unit of the NPA dated 20 April 2020 (a copy of which is attached marked "A"), Adv. Macadam stated in paragraph 6 thereof that "*efforts were made through the Head of the Prosecution Service to locate the missing docket as it was called for by a previous incumbent of this office*" but that those efforts had "*failed to locate the docket*".

7 The fact that the original docket had gone missing was also recorded in a letter sent by Brigadier N Xaba, the Section Head: Crimes against the State of the Directorate for Priority Crimes to the NPA on 23 April 2020. In that letter (a copy of which is attached marked "B"), Brigadier Xaba states in the fourth paragraph thereof that the "*docket was reported missing in the offices of the National Prosecuting Authority*".

8 On the instructions of our client, we made multiple requests for an official investigation to be opened into the circumstances surrounding the disappearance of the docket and the original documents contained therein. All attempts to persuade the NPA and South African Police Service ("SAPS") to open an official investigation have fallen on deaf ears.

9 Our client is understandably concerned that the removal of the docket may amount to a cover-up. Particularly so when considering that this case has been delayed for more than 3 decades and that the NPA has admitted under oath that political interference suppressed the cases referred by the TRC to the NPA, including the Cradock 4 case. In this regard see the supplementary affidavits of Advocates T P Pretorius SC and C R Macadam filed in *Rodrigues v NDPP & Others* [2019] 3 All SA 962 (GJ).

10 Accordingly, an investigation was required into the possible concealing or destruction of the original police docket. The potential criminal charges would be theft of a police docket, as well as attempting to defeat or obstruct the administration of justice.

11 Since there were no discernible efforts to investigate the disappearance of the original docket, on 11 September 2020, our client, who lives in Cape Town, attended at the Central Police Station in Buitenkant Street in order to lay a complaint in relation to the missing docket. At the police stations, Captains Wyderman and Van Niekerk declined to process the complaint advising Mr Calata, *inter alia*, that –

11.1 the case should be opened at the Silverton Police Station in Pretoria, as Pretoria is the most likely area in which the docket went missing; and

11.2 that if the case was opened at the Central Police Station, Cape Town, the matter would be transferred to the Silverton Police Station, which transfer process "could take months".

12 We were perplexed by the response of the SAPS since it is our understanding that a complainant can register a case anywhere in the Republic. We are of the view that the SAPS ought to have assisted Mr Calata by registering the case, giving him a CAS number and then transferring the docket to the station in the area where the crime was committed. We fail to understand why this would have taken months.

13 Nonetheless, on 1 October 2020, Mr. Leigh Watson ("Mr. Watson") from our Sandton office attended at the Silverton Police Station in Pretoria to lay the complaint on our client's behalf in accordance with the advice received from Captains Wyderman and Van Niekerk. He attempted to hand over an affidavit made by Mr. Calata, a copy of which is annexed hereto marked "C".

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- 14 At the Silverton Police Station, Mr. Watson was informed by Colonel Everson and Captain Damon that our client could not open a case with the SAPS regarding the missing docket, as only the Independent Police Investigative Directorate ("IPID") could investigate such a case. This is notwithstanding the advice offered by Mr Watson that the docket went missing while in the possession of the NPA not the SAPS.
- 15 The Independent Police Investigative Directorate Act 1 of 2011 authorises IPID to investigate criminal offences allegedly committed by members of the SAPS and the Metro Police Services. The IPID has no authority to investigate the NPA. We are of the respectful view that the SAPS acted unlawfully in refusing to open a case of theft and defeating the administration of justice in respect of the missing Cradock 4 docket.
- 16 The prosecution of those responsible for the brutal murders of the Cradock 4 is a matter of national importance. The removal, disposal, destruction or concealment of the original docket amounts to a serious offence. It has considerably inhibited and delayed the murder investigations. We accordingly seek the intervention of your good offices to ensure that a criminal investigation ensues without further delay.
- 17 We look forward to receiving your urgent response.

Yours faithfully

TIM FLETCHER / TIM SMIT
CLIFFE DEKKER HOFMEYR INC

Copied to:

Minister of Justice: Minister Ronald Lamola
By Email: ZaneNdlovu@justice.gov.za

Provincial Commissioner of Police (Western Cape): Lt Gen Y Matakata
By Email: MatakataY@saps.gov.za

National Director of Public Prosecutions: Adv Shamila Batohi
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Provincial Commissioner of Police (Western Cape): Lt Gen Y Matakata
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Provincial Commissioner of Police (Gauteng): Lt Gen E Mawela
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Director of Public Prosecutions (Eastern Cape): Adv L M Sakata
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Provincial Commissioner of Police (Western Cape): Lt Gen Y Matakata
By Email: MatakataY@saps.gov.za

Investigating Officer (DPCI): Colonel Joe Makua
By Email: MakuaJ@saps.gov.za

Station Commander: Central Cape Town Police Station
By Email: CT-CENTRAL-SAPS@saps.gov.za

Station Commander: Silverton Police Station
By Email: GPPTaSilvertonSAPS@saps.gov.za

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Priority Crimes Litigation Unit



The National Prosecuting Authority
South Africa

Cliffe Dekker Hofmeyr
JOHANNESBURG

20 April 2020

ATTENTION: Tim Smit
E-mail: Tim.smith@cdhlegal.com

INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

1. I acknowledge receipt of your letter with reference T S Fletcher/T P Smit dated 20 April 2020 and respond as follows.
2. At our meeting of September 2019, I indicated that the Mthimkulu, PEPCO 3 and Cradock 4 matters should be investigated collectively as they involve essentially the same group of perpetrators. I also referred to the fact that the Motherwell bombing case was also relevant in that the deceased were killed to prevent them revealing their involvement in the Cradock 4 matter. In the Mthimkulu matter all the perpetrators have been granted amnesty but no inquest had been held, nor a prosecution instituted. In the PEPCO 3 matter, the investigation had yet to be concluded, but the indications were that the persons who refused amnesty were all deceased. My view was that the decision in the Cradock 4 matter should be made once everything had been investigated.
3. Subsequent to that meeting Ms de Bruyn did provide feedback to Cliff Marion on the issues raised by him. I have been copied on the email which her supervisor forwarded to you today.

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INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

4. After our meeting the matter was brought to the attention of our nodal point in the Eastern Cape, who indicated that he would personally attend to the matter as he had appeared as counsel in both the Cradock 4 and Motherwell cases.
5. Meetings were held with the researchers to identify all the outstanding material located in public and private archives. At our last meeting we decided to offer a contract employment to a former TRC researcher who had extensively worked on the State Security Council and was ideally based to do the dedicated research which was necessary. She had indicated her willingness to work for us, but due to the lockdown activities, her appointment has not been able to be taken further through our strict procurement processes.
6. ~~Further efforts were made through the Head of our Prosecution Service to locate the missing docket as it was called for by a previous incumbent of his office. This failed to locate the docket. The disappearance of this docket is in fact no excuse for not continuing with the investigation. I am extremely concerned about the remarks attributed to the investigator in paragraph 4 of your letter and am taking this matter up with his commanding officer.~~
7. The docket contained nothing more than the relevant extracts of the last Goniwe inquest as well as the amnesty proceedings. These records are easily re- obtainable. In fact, I personally handed the investigating officer the judgment of the amnesty committee as well as the heads of argument which were filed in the Goniwe inquest and other relevant documentation (these documents identified the relevant role players and could easily be used to reconstruct the docket).
8. My office contacted Rhodes University in order to purchase an electronic copy of the inquest record in its possession. The University raised an issue regarding compliance with our procurement policies. We were in the process of resolving this issue. In addition we established that certain records were available in a provincial archive, but only in hard copy form. The archive lacks the capacity to convert the documents to an electronic format which would have necessitated one of our researchers having to travel to the Eastern Cape to physically peruse the documents and make copies of those deemed to be relevant. Our researcher

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INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

also obtained a copy of the book published by Chris Nicholson to extract relevant information.

9. Unfortunately a major stumbling block was encountered due to a lack of buy-in from the DPCI which is responsible for the investigation of the case. This is not limited to this case, but relates to all the numerous other TRC matters.
10. Attempts at my level to get a proper buy-in failed to produce positive outcomes, resulting in the escalating the matter to the NDPP and then Head NPS.
11. This resulted in a meeting between us and the Head DPCI on the 31st of January 2020 where I tabled my concerns. The Head DPCI undertook to seek approval to appoint former members who had TRC experience on a contract basis. He was provided by myself with a list of ex-police officers who were willing to do the work. I also wrote to the commanding officer expressing my concerns about TRC cases and requesting him to consider having investigators working full time on these matters and not having to accommodate them in between their other investigations. I had no response to this letter which was preceded by a lengthy meeting between myself and him.
12. I would have again escalated the position with the DPCI had it not been for the lockdown. A consequence of the DPCI not having commenced the investigation was that our nodal point decided at short notice to leave the NPA at the end of March 2020. A new nodal point has been appointed, but due to the lockdown I have not been able to brief him fully on the matters that he must take over. There are several matters over and above those mentioned here.
13. Unfortunately it is extremely difficult to give proper attention to these matters at the present time. Although I am every day at the office, because I have to attend to state security and management issues the majority of role players are not able to report for duty complicating engagements with them. I have been advised that the DPCI are also extremely constrained in what investigations they can currently conduct.

GP

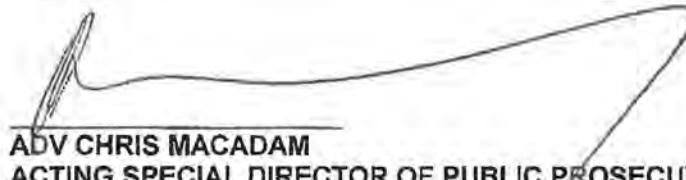
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INVESTIGATION INTO THE MURDER OF THE CRADOCK 4

14. I am taking the issue of investigations up with the Unit Commander and will revert to you as soon as I receive a response. However, it is anticipated that proper attention to the cases will only be able to commence once the current restrictions are lifted.

15. I apologise for being amiss in not communicating further with you after our meeting. I did however have telephonic discussions with Cliff Marion and was unfortunately from October 2019 to January 2020 fully occupied with addressing extremely serious international matters as well as having to take urgent action regarding a terrorist organization that was on the point of carrying out a terrorist attack on the country.

Regards



ADV CHRIS MACADAM
ACTING SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS
HEAD: PRIORITY CRIMES LITIGATION UNIT

DATE: 20 April 2020

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"B"



HAWKS
DUILEWAARDE EN INVESTIGATIE

Privaatsak/Private Bag X 1500, SILVERTON

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**SECTION HEAD
CRIMES AGAINST THE STATE AND TOMS
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DIRECTORATE FOR PRIORITY CRIME
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The Acting Special Director
Priority Crime Litigation Unit
National Prosecuting Authority
HEAD OFFICE

INVESTIGATION INTO THE MURDER OF CRADOCK 4: CATS CAS 05/06/2016

Your email dated 20 April 2020 refers.

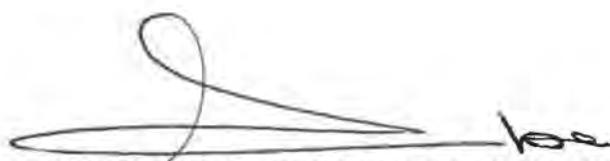
The Investigating Officer visited the families of Cradock 4 in Eastern Cape to appraise them about the investigation on the 19 to 22 March 2019.

The investigator also visited the King Williamstown State archives to look for Inquest transcripts and other documentation that could further the investigation.

Hence the docket was reported missing in the offices of the National Prosecuting Authority, Silverton, the Investigator reconstructed the new docket.

The docket is fully reconstructed with the help of former Brigadier Marion who is employed by the Human Rights Foundation.

All the relevant information has been gathered and the docket file will be presented before Advocate Nico Henning of Grahamstown DPP's office for perusal and guidance after the lockdown.


BRIGADIER
SECTION HEAD: CRIMES AGAINST THE STATE AND TOMS
SERIOUS ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
N XABA

Date: 20/04/23

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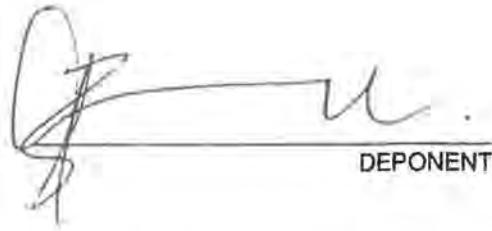
STATEMENT OF LUKHANYO CALATA

Statement of Mr. Lukhanyo Calata, South African identity number 811118 5457 08 9 employed at 4 Stirling Street, District Six, Cape Town, 8001.

1. I hereby make oath and state as set out below. Where the information in this statement is not within my personal knowledge, that will either be clear from the context or I will make an express reference.
2. I am the son of the late Fort Calata. My father was murdered, along with his colleagues, Matthew Goniwe, Sparrow Mkhonto and Sicelo Mhlauli (who became known as the "Cradock 4") by members of the security branch of the South African Police Force, namely Eric Taylor, Johann van Zyl, Gerhardus Lot and Nic Janse van Rensburg on 27 June 1985.
3. Notwithstanding the fact that two separate inquests have been held (in 1987 and 1992) in relation to the murders of the Cradock 4, no one has yet to be as responsible for the murders of the Cradock 4 – some 35 years after their murder.
4. I am aware that a criminal docket has previously opened in relation to the murders of the Cradock 4, but that the docket has "*gone missing*".
5. During a meeting held at the offices of the National Prosecuting Authority ("NPA") (located at VGM Building, 123 Westlake Avenue, Weavind Park, Silverton, South Africa) on 12 September 2019 to discuss the status of the investigation in relation to the murder of the Cradock 4, Advocate Chris Macadam ("Adv. Macadam") (the Acting Special Director of Public Prosecutions) advised that he did not know the status of the docket, but that the docket in relation to the Cradock 4 murders was the subject of an anti-corruption unit investigation as it had been removed from the office of the NPA and had not been located since.
6. In a letter sent by Adv. Macadam for the Priority Crimes Litigation Unit of the NPA dated 20 April 2020 (a copy of which is attached marked "A"), Adv. Macadam stated in paragraph 6 thereof that "*efforts were made through the Head of the Prosecution Service to locate the missing docket as it was called for by a previous incumbent of this office*" but that those efforts had "*failed to locate the docket*".
7. The fact that the docket had gone missing was also recorded in a letter sent by Brigadier N Xaba, the Section Head: Crimes against the State of the Directorate for Priority Crimes to the NPA on 23 April 2020. In that letter (a copy of which is attached marked "B"), Brigadier Xaba states in the fourth paragraph thereof that the "*docket was reported missing in the offices of the National Prosecuting Authority*".
8. The fact that the missing docket was called for by the previous incumbent of the office of the NPA, Advocate Nomgcobo Jiba, and thereafter went missing without a trace must be investigated.

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DEPONENT

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Cape Town on the 22 day of **SEPTEMBER 2020**, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.



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118/2020
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COMMISSIONER OF OATHS

Full Names: S. Solo Unterland Sherif
Business Address: 28 Unterland Street
Office: Cape Town Constable

CP
LC

South African Police Service*South African Police Service*

Private Bag X1500, Silverton

Fax No: 012 846 4442

My reference: 26/30/1

THE NATIONAL HEAD
DIRECTORATE FOR PRIORITY CRIME
INVESTIGATION
SILVERTON
0127Enquiries: Maj Gen Ledwaba
Brig Xaba

Tel no: 082 319 9489

E-mail: dpcihhead@saps.gov.za

2020-10-23

Cliffe Dekker Hofmeyr Inc
1 Protea Place
SANDTON
2196

Dear Mr Tim Fletcher

**ALLEGED REFUSAL BY SAPS TO OPEN CRIMINAL CASE FOR INVESTIGATION OF
MISSING CRADOCK FOUR**

Your letter dated 4 October 2020 to the offices of the Minister of Police and the National Commissioner of Police respectively, has bearing on this matter.

The docket on the alleged missing Cradock four, was reconstructed and transferred to the Director of Priority Crime Investigation (DPCI) in the Eastern Cape (EC), for investigation.

The Eastern Cape DPCI registered the following cases:

- KwaZakhele CAS 39/07/2020 Matthew Goniwe
- Swartkops CAS 60/07/2020 Sparrow Mkhonto
- Swartkops CAS 61/07/2020 Sicelo Mhlauli
- Swartkops CAS 62/07/2020 Fort Calata

The abovementioned cases are receiving the necessary attention from the team of investigators from the DPCI EC.

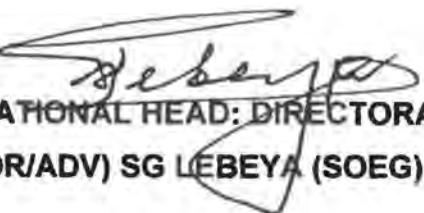
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**ALLEGED REFUSAL BY SAPS TO OPEN CRIMINAL CASE FOR INVESTIGATION OF
MISSING CRADOCK FOUR**

Regarding the original missing docket on the Cradock four, the South African Police Service (SAPS) has opened a criminal case for defeating the ends of justice and theft of a docket, as per Silverton CAS 88/10/2020 on 1 October 2020. The complainant is Mr Lukhayo Calata, who is the son of the late Fort Calata.

This case is being investigated by the Provincial Investigating Unit (PIU) of Johannesburg, which falls under the SAPS's Gauteng Provincial Office.

Yours sincerely


S. G. Lebeya
LIEUTENANT GENERAL
NATIONAL HEAD: DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
(DR/ADV) SG LEBEYA (SOEG)

Date: 2020 -10- 23

2 GP
L.C.



SUID-AFRIKAANSE POLISIEDIENS

SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag x1500 Silverton 0127

Verwysing Reference	26/30/1	THE COMPONENT HEAD SERIOUS ORGANISED CRIME DIRECTORATE FOR PRIORITY CRIME INVESTIGATION SILVERTON 0127
Navrae Enquiries	Brigadier N Xaba Colonel JN Makua	
Telefoon Telephone	0823199489	
Faksnommer	012 401 3235	

Cliffe Dekker Hofmeyr Inc
1 Protea Place
SANDTON
2196

Dear Tim Fletcher

RE: REFUSAL BY SAPS TO OPEN A CRIMINAL CASE INTO THE MISSING CRADOCK FOUR, OUR DOCKET: SILVERTON CAS 86/10/2020

The matter was first reported as Silverton CAS 88/10/2020 which was later rectified as Silverton CAS 86/10/2020.

The case is investigated by Gauteng Provincial Investigation Unit (PIU) under the command of Brigadier CE Louw: contact number 082 778 7806 with the email address: LouwCE@saps.gov.za. The investigating officer is Sergeant HP Mojapelo with the contact number 073 261 8784.

You are therefore advised to directly communicate with Brigadier Louw for an update on the progress of this investigation.

Kind regards


MAJOR GENERAL
COMPONENT HEAD: SERIOUS ORGANISED CRIME
DIRECTORATE FOR PRIORITY CRIME INVESTIGATION
MS LEDWABA N. Xaba

Date: 2021-03-26

GP
LC

From: Tim Fletcher <Tim.Fletcher@cdhlegal.com>
Sent: Tuesday, 18 May 2021 11:47
To: GP:Specific Crimes Prov Head - Brig Louw <LouwCE@saps.gov.za>
Cc: Tim Smit <Tim.Smit@cdhlegal.com>
Subject: REFUSAL BY SAPS TO OPEN A CRIMINAL CASE INTO THE MISSING CRADOCK FOUR, OUR DOCKET: SILVETON CAS 86/10/2020 [CDH-JHBDocs.FID4634116]

Dear Brigadier Louw

I enclose a letter received from Major General Ledwaba and Brigadier Xaba and ask that you arrange as soon as possible for us to have the following information so that we know how far the investigation has progressed and we are then in a position to report to and advise our clients.

In regard to the investigation

1. Was an affidavit was taken from Advocate Chris Macadam as it seems that the docket was taken from his custody in the offices of VGM(PCLU);
2. Was an affidavit was taken from the former Investigating Officer Captain Masegela;
3. Does Captain Masegela have a receipt as to who he handed the docket to at VGM Building (NPA Head Office);
4. Was the video footage for the day on which the docket was taken, viewed to establish who took possession of the docket. We understand that interaction and visits to VGM Building are tightly controlled under considerable security;
5. Was former DNDPP Nomgcobo Jiba interviewed? This in regards to the report from Mr Macadam that suggests that Adv Jiba called for the docket;
6. Was the document trail - with regard to the docket – investigated? Our understanding is that there is a standard operating procedure (SOP) that no document, docket or file can be taken or received without a signature. If this was not done was it investigated why this happened and who was responsible for this? If so were any departmental steps instituted against the responsible person? We suggest in this context that if the Cradock 4 docket was taken against a signature, it would not be difficult to trace the last person who took responsibility for the docket.
7. Was a physical search for the document performed in the offices and filing facilities at VGM Building and all occupants made aware that the docket was missing and being sought?
8. Was a check and search conducted at the SAPS Offices of origin where the cases were registered (SAPS Swartskop and KwaZakele - Eastern Cape). In this regard the original Crime Registers were:
 - a. KwaZakele CR 373/06/1985;
 - b. KwaZakele CR 212/06/1985;
 - c. Swartskop CR 12/07/1985;
 - d. Swartskop CR 13/07/1985;
 - e. Swartskop CR 140/06/1985;

GL
LC

9. We understand that when the Scorpions were disbanded all their material, files, dockets and other material were handed over to the DPCI against a receipt and all of those materials were stored in containers on Promat Building DPCI Head Office in Silverton. Were these containers searched for the docket?
10. Did the investigating Officer interview Colonel Makua of the DPCI Pretoria?

By posing these questions we do not suggest that we know better than the SAPS how to conduct an investigation. We also do not propose that the questions we have raised are the only questions that might be asked or lines of investigation that might be followed in an enquiry of this nature. But you will understand that the investigation of the missing docket has been delayed for so long and that it forms part of the greater matter, which is a stain on the history of our country and a stain on the history of the police, that we must push for answers.

Your assistance is appreciated.

Sincerely

Tim Fletcher

Director - Dispute Resolution
 Cliffe Dekker Hofmeyr Inc
 Reg No: 2008/018923/21
 1 Protea Place, Cnr of Fredman and Protea Place, Sandton, Johannesburg, 2196
 Tel. +27 11 562 1061 Mobile. +27 83 325 0731 Fax. +27 11 562 1661
tim.fletcher@cdhlegal.com | www.cliffedekkerhofmeyr.com



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GR
LC

suleman@ubunyechambers.co.za

From: GP:Specific Crimes Prov Head - Brig Louw <LouwCE@saps.gov.za>
Sent: Wednesday, 19 May 2021 07:05
To: GP:Detect PIU - Lt Col Manganyi
Cc: Tim Fletcher
Subject: FW: REFUSAL BY SAPS TO OPEN A CRIMINAL CASE INTO THE MISSING CRADOCK FOUR, OUR DOCKET: SILVETON CAS 86/10/2020 [CDH-JHBDocs.FID4634116]
Attachments: CCE20201023_0002.pdf

[CAUTION] This email originated from outside of CDH. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good morning Col Manganyi

The trailing E mail and attachment has bearing on the matter.

Kindly obtain Silverton CAS 86/10/202 and bring to Midrand 10111 on 2021-05-20, as I will be attending a two day Bi lateral meeting.

Cc Good morning Mr Fletcher

Case docket will be obtained and perused.

Feedback will be submitted, or alternatively a meeting, where the subject can be discussed.

Thank you.

FH#Dxz BRIGADIER

PROVINCIAL HEAD:SPECIFIC CRIME INVESTIGATION:
DETECTIVE SERVICE GAUTENG
CE LOUW

 082 778 7906

Email: LouwCE@saps.gov.za

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Cc: Tim Smit <Tim.Smit@cdhlegal.com>
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Tim Fletcher

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