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Date	8 May 2020

Attention: Ms Shamila Batohi; Mr. Chris Macadam

By Email: [sbatohi@npa.gov.za](mailto:sbatohi@npa.gov.za);  
[CMacadam@npa.gov.za](mailto:CMacadam@npa.gov.za); and  
[NMonageng@npa.gov.za](mailto: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 Craddock 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](mailto:nhenning@npa.gov.za)  
General S G Lebeya – [LebeyaSG@saps.gov.za](mailto:LebeyaSG@saps.gov.za)  
Brigadier N Xaba – [XabaN@saps.gov.za](mailto:XabaN@saps.gov.za)  
Colonel Makua – [MakuaJ@saps.gov.za](mailto:MakuaJ@saps.gov.za)

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<sup>1</sup> <http://historicalpapers-atoms.wits.ac.za/inquest-into-the-death-of-matthew-goniwe-fort-calata-sparrow-mkhonto-and-sicelo-mhluli-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](mailto:ematzke@npa.gov.za)

Copied to: Acting Director of Public Prosecutions (Grahamstown): [imsakata@npa.gov.za](mailto:imsakata@npa.gov.za)  
Colonel Makua: [MakuaJ@saps.gov.za](mailto: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 35<sup>th</sup> 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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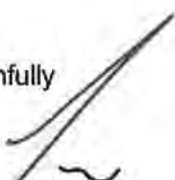
National Prosecution Service  
22 June 2020

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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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