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SECRET

Office of the Head
Priority Crimes Litigation Unit
VGM Building
PRETORIA

INTERNAL MEMORANDUM

TO : ADV VP PIKOLI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

FROM : ADV AR ACKERMANN
SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS AND HEAD: PRIORITY CRIMES LITIGATION UNIT

DATE : 16 MAY 2006

SUBJECT : NATIONAL INTELLIGENCE AGENCY INCIDENTS

Dear Adv Pikoli

1. I confirm that you advised me that at a recent meeting, the National Commissioner made certain allegations against myself, my involvement in cases arising from the TRC process and expressed a reluctance on his part to have SAPS cooperate with the PCLU. I further confirm that you asked me for the basis of the acrimony which exists between myself and the National Commissioner.
2. The purpose of this memo is to respond to the above allegations.

Number of copies: 2

Copy 1: Adv VP Pikoli
Copy 2: PCLU File

3. The PCLU was created by Mr Ngcuka in 2003 as a special directorate in his office. The President formally established the unit by way of a proclamation which mandated it to manage and direct investigations and prosecutions into:

3.1 Serious international and national crimes which impact on State security;

3.2 Prosecutions arising from the Statute of Rome;

3.3 Specific cases referred by the NDP on an *ad hoc* basis.

4. I was appointed as the Special Director in charge of the unit. The unit had no investigative capacity and therefore was reliant in this regard on both SAPS and the DSO. The NDPP appointed DDP's Macadam and Pretorius to assist me.

5. Shortly after my appointment, my deputies and I had meetings with Commissioner de Beer, the Divisional Head of the Detective Service and his legal advisor, Assistant Commissioner Jacobs to appraise them of my unit's mandate and to establish a working relationship between the Detective Service and my unit. This meeting was extremely cordial and Commissioner Jacobs drew my attention to certain cases involving trafficking in conventional arms which were under investigation by SAPS. He informed me that the Conventional Arms Control Body had expressed its concern that no prosecutions had been instituted and the DDP's appeared to be unable to properly deal with the cases. The cases in question were drawn by my office and shortly thereafter, prosecutions instituted.

6. I also introduced the unit to the DSO.

7. Shortly thereafter, Mr Ngcuka informed me that my unit should take over the management of TRC investigations and prosecutions from the DSO. I am informed that this decision was based on the following background:

7.1 Shortly after his appointment, Mr Ngcuka created a Human Rights Unit in his office, headed by a DDP (Mr Brink Ferreira) to deal with such cases.

7.2 For various reasons, this unit had been unable to discharge its mandate and in 2001, Mr Ngcuka had transferred the cases to the DSO. Mr Ngcuka was adamant that all the TRC matters had to be investigated by the DSO and not SAPS.

7.3 As a consequence of this decision, the DSO requested Commissioner de Beer to conduct an audit of all TRC cases carried by SAPS and to refer the cases in question to the DSO. SAPS was perfectly amenable to this request as is confirmed from the attached documentation relating thereto.

7.4 The DSO had only a small number of investigators in its head office available to conduct all the investigations which were necessary and this limited any progress which could be made. Only a handful of cases were finalized where decisions were made not to prosecute.

7.5 At this point in time, the final report of the TRC had not been released and there was wide-spread speculation that the President was intending to declare an amnesty for further prosecutions. As a result, it was felt that it would be inappropriate to institute prosecutions before the report was released and the President had responded thereto.

7.6 Shortly after the creation of the PCLU (April 2003), the report became available and the President, in a public statement, ruled out any form of further amnesties. He specifically mandated the NDP to proceed with prosecutions according to normal practices.

8. During May/June 2003, I immediately conducted an audit of TRC cases on hand and a presentation was given to Mr Ngcuka and his deputies. I had identified certain cases warranting prosecution, as well as a number of matters which required further investigation. Mr Ngcuka and his deputies were satisfied with my presentation and I was given the go-ahead to proceed.

(Annexure "A")

9. I however ran into considerable difficulties in obtaining the necessary legal authorizations for

investigations from Adv Ledwaba (who was Head of the DSO's operations). In addition, the DSO investigators complained that they required access to SAPS dockets and personnel to conduct the necessary investigations and that SAPS was reluctant to assist them. This related to investigations against members of the security forces. As far as investigations against AP/A and MK were concerned, these were being dealt with by a Director and Senior Superintendent from SAPS, who reported to Adv Fick SC, a DDP in Adv Mpshe's office.

(Annexure "B")

10. As a result of the above difficulties, I met with Commissioner de Beer and requested him to take over the TRC cases dealt with by the DSO. He requested me to put my request in writing, as he indicated that this matter would have to be discussed with Commissioner Selebi. After I put in my request, he, in writing, advised me that SAPS would not investigate, unless the President authorized it to do so. There was however no objection to SAPS continuing with the AP/A and MK investigations. Relevant correspondence is attached hereto.

(Annexures "C", "D" and "E")

11. I appointed DDP Macadam to focus on the DSO cases, while I dealt with the SAPS cases. Both Macadam and I disposed of a large number of cases on the basis that there were no grounds to prosecute. Macadam however had identified a small number of cases involving security branch members, but informed me that he could not prosecute these matters, as he had dealt with the accused while he was a member of the TRC. In addition, I believed that a prosecution relating to the attempted poisoning of *Rev Chikane* was also justified and that it would be inappropriate for any person other than myself to conduct the prosecution because of the links to the *Wouter Basson* matter which I personally had dealt with. I therefore decided to deal with all these matters myself. I appointed Macadam to deal with the *Blani* matter which SAPS had informed me justified prosecution.

12. Due to the fact that the security branch cases were ones where amnesty had been refused, I informed the suspects' attorney of my intention to institute proceedings so that any review of the amnesty process could be dealt with expeditiously. During the course of the discussions, I was informed by the attorney that he acted for a group of former police generals, who were

protecting the interests of any security branch member faced with prosecution. In this context, he informed me that a solid case had been prepared, implicating the President on a charge of terrorism, linked to the MK landmine campaign. The two SAPS members dealing with the AP/PA and MK cases also informed me that there was a case against the President. It was clear to me that the case against the President was being relied on to intimidate the NPA and not prosecuting security branch members. Due to the fact that neither the lawyer in question nor the SAPS members could on any occasion produce a docket containing evidence implicating the President, I instructed Macadam to go through all the relevant TRC evidence in order to establish whether there was any merit in the allegations against the President. Mr Ngcuka was at all times informed of these developments.

13. Due to the difficulties encountered with the DSO, my two deputies and I met with Commissioner Lalla to inform him of my unit's mandate and to request him to channel any intelligence relating to the cases to my unit. During the course of these discussions, I did express my dissatisfaction with the DSO and informed him of the allegations being made against the President. Macadam also asked his assistance concerning the *Motherwell* case where the accused were alleging that the deceased had been killed because they were MK operatives. As I subsequently discovered, this conversation was clandestinely recorded both on audio and video.

14. At a later stage, my two deputies and I were at short notice summoned to a meeting with Mr Ngcuka. Mr Ngcuka informed me that Commissioner Selebi had addressed a meeting of the Directors General and alleged that Mr Ngcuka was preparing to have the President and six generals arrested and charged with terrorism. Mr Ngcuka further informed me that Commissioner Selebi was in possession of a video recording in which I had admitted that the President was due to be arrested. I was then shown the video recording of my meeting with Commissioner Lalla and this was how I learned that the meeting had been recorded.

15. Mr Ngcuka further informed me that Commissioner Selebi had complained about the NPA being in possession of SAPS dockets. Apparently, the allegation was that these dockets contained the evidence that would be used to prosecute the President and other high profile

ANC leaders. I denied the existence of both an attempt to arrest the President and others as well as the existence of the so-called relevant police dockets against them. Mr Ngcuka then made arrangements for you and three police commissioners to be present at Adv Mpshe's office the next day for an inspection of the dockets to be carried out.

16. At Adv Mpshe's office, Mr Ngcuka invited SAPS to identify the dockets relating to the President and others, which they were unable to do. Mr Ngcuka then instructed the SAPS Commissioners to have all the SAPS dockets removed forthwith and for the two SAPS members working with Adv Fick to vacate their office at the DPP's premises.

17. Shortly thereafter, Minister Maduna personally visited Mr Ngcuka, myself and Macadam and was fully briefed on all these developments. Macadam had compiled a report to Mr Ngcuka in which he had expressed the opinion that having perused all the relevant TRC material, there was no case against the President or the other prominent ANC members who had been refused amnesty. A copy of the report is attached hereto. Minister Maduna also satisfied himself and said that the allegations made by Commissioner Selebi were untrue and undertook to inform the President accordingly.

(Annexures "E" and "F")

18. While I was absent from the office, I was informed by Macadam that Mr Ngcuka had summoned him to a meeting with Mr Billy Masella. I was further informed that the purpose of the meeting was to satisfy the Office of the President that there was no intention to prosecute the President. Macadam finally advised me that he had given Masella a copy of his report and that he was satisfied with the manner in which the manner had been dealt with.

19. I was angry that Commissioner Lalla had clandestinely recorded a confidential meeting and in my personal capacity, sent him a letter in which I expressed my feelings. I heard nothing further from him.

(Annexure "H")

20. Thereafter, Mr Ngcuka resigned and Dr Ramatse was appointed as the Acting NDP.

21. As a result of pressure to deliver on the TRC matters, I decided that it was important to institute a prosecution relating to the attempted poisoning of Rev Chikane. On the eve of the arrest of the suspects, I was informed by Dr Ramatse that their arrests should be placed on hold until further notice. Shortly thereafter, I was informed that guidelines had to be formulated and incorporated into the NPA's general policy and procedure before any further prosecutions arising from TRC matters could be instituted.

22. Shortly thereafter, Dr Ramatse informed me that he had attended a meeting in Cape Town with the Minister of Justice & Constitutional Development, other Cabinet Ministers and Commissioner Selebi. He further informed me that Commissioner Selebi had alleged that the NPA was planning to paralyse Government by arresting a large number of prominent Government officials who had previously been involved in MK activities. As a result, Dr Ramatse submitted a comprehensive, secret internal memorandum to the Minister, explaining in detail how the NPA was managing TRC cases and denying the allegation made by Commissioner Selebi. It is believed that Commissioner Selebi had sight of this report.

(Annexure "I")

23. Due to delays with the finalization of the processes necessary before the guidelines could be implemented, no significant work was done on TRC prosecutions in 2005.

24. In the latter part of 2005 however, it was publicly announced that the President had appointed a commission to establish whether the DSO should be incorporated into SAPS. I as approached by the NPA's legal advisor, Gerhard S Nel, and informed that Commissioner Selebi had submitted an affidavit to the Commission in which he had made several allegations against the PCLU and had in essence recommended its closure. I was required by Mr Nel to respond to these allegations insofar as they related to the PCLU, which I did. I also attended the sittings of the commission and also discussed certain of the allegations with Deputy National Commissioner Pruis and Commissioner de Beer. It appeared to me that Commissioner Selebi was under the impression that the PCLU was in some way part of the DSO.

25. In early 2006, the guidelines were finally implemented and you instructed me to proceed with prosecutions. The guidelines make provision for the PCLU to be assisted by representatives of SAPS, NIA and the DSO.

26. Prior to the implementation of the guidelines, you had advised me to convene a meeting of these role players so as to inform them of the nature of the guidelines which were due to come into effect. Under your name, an invitation was extended to all the role players. However, only the DSO representative attended the meeting.

(Annexure "K1")

27. After the guidelines had been implemented, you again requested the relevant State departments to nominate officials as contemplated by the guidelines.

(Annexure "K2" – NIA invitation)

28. I also met with Adv Mngwenge, who agreed that SAPS could take over the TRC cases currently with the DSO. I also had a series of discussions with Commissioner de Beer in order to arrange for SAPS to take over all these TRC cases. In the course of these discussions, I gained the impression that Commissioner de Beer was not opposed to doing so, but that he required higher authority before he could agree to do so. In follow-up discussions, it appeared that there was now some reluctance on the part of SAPS to take over these cases, which was not the case when I originally had spoken to Commissioner de Beer.

29. Eventually, at the request of Commissioner de Beer, I compiled a letter for you to submit to Commissioner Selebi, outlining all the cases which required investigation and requesting him to have the necessary investigators appointed. I have not had sight of a reply from him and only learned from you that he had at this meeting expressed his reluctance to cooperate with the PCLU and made other specific allegations against me.

(Annexure "L")

30.

I must confess to being taken aback by these allegations and deal hereunder with the specific ones which you brought to my attention:

30.1 "The chasing away of NIA from my office"

I am not aware of such an incident and deny that such an incident has ever taken place. The only time I have met with a NIA official was on 27 February 2006 at ± 11:45 in my office at the VGM Building in Weavind Park. This meeting occurred as a result of an invitation the PCLU had extended to NIA to discuss the implementation of the TRC guidelines.

(Annexure "K1")

NIA failed to send a representative to the first meeting. After approval of the TRC guidelines by the Portfolio Committee of the Department of Justice & Constitutional Development, the PCLU once again addressed a letter to NIA to discuss the possible assistance that NIA could render to it in the prosecution of perpetrators. As already stated, this meeting took place on 27 February 2006.

I stand to correction, but my recollection of this meeting is as follows:

(i) The meeting was scheduled for 11 am;

(ii) The representative of NIA was Ms Yvonne Mabule;

(iii) She arrived at plus-minus 11:45;

(iv) I provided her with a brief background which had led to the drafting of the guidelines;

(v) I also provided her with a copy of the guidelines and referred her specifically to par B6, in which it is stated:

"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 National Intelligence Agency.
- (b) The Detective Division of the South African Police Service.
- (c) The Department of Justice & Constitutional Development.
- (d) The Directorate of Special Operations."

(vi) I am quite certain that I would have stressed the point that the final decision on whether to prosecute or not is vested in the NPA;

(vii) She informed me that NIA would only be interested in matters which threatened national security;

(viii) At that point in time, I showed her a draft letter addressed to Commissioner Selebi, setting out the relevant cases under investigation. I am not sure whether I have provided her with a copy of the letter.

(Annexure "L")

(ix) I think that I also informed her that the only case that came to mind, which could negatively have influenced the security of the Republic, was the Powell case which involved alleged arms caches in KwaZulu-Natal.

(x) I can also recall that I cautioned her to keep the intelligence operations separate from police investigations to avoid any legal challenges.

(xi) This meeting was very cordial and tea or coffee was served during the discussions.

(xii) The meeting lasted at least 45 minutes.

(xiii) The only indication that could have created the perception of "chasing her out of my office" was the fact that according to my diary, I had another appointment at 13h00 with one Sophie Matemanne. Although I might have been in a hurry at this point in time, I never "chased her out of my office".

(xiv) I am quite certain that a *verbatim* recording of the meeting could be obtained from NIA.

30.2 The reluctance of SAPS to cooperate with Ackermann/PCLU relating to TRC matters

My staff and I have had numerous meetings and dealings with SAPS members in connection with TRC matters and on not one occasion have we been informed of any such reluctance, nor am I in receipt of any written communication from SAPS in which such sentiments are expressed. In fact, on more than 10 occasions, Commissioner de Beer informed me that he was more than willing to provide investigators, but that he required the permission of Commissioner Selebi. In at least three cases, investigators have already been earmarked to commence investigations once the required permission has been obtained. Since 2003, all the non-TRC matters have been dealt with by a specialised SAPS unit, headed by Senior Superintendent Bester. Commissioner de Beer also informed me that Senior Superintendent Bester and his unit should also be involved in the investigation of the TRC matters. I have discussed these matters with Senior Superintendent Bester and some of his investigators and none of them have expressed any reluctance to investigate these matters, nor to work with me or the members of the PCLU. It would therefore appear that the only source of reluctance to investigate TRC cases, emanates from Commissioner Selebi.

30.3 As a result, I can see no reason for SAPS not to cooperate with the PCLU in the investigation and prosecution of TRC matters. My staff and I have a more extensive knowledge of such matters than the DPP's offices. In the numerous discussions concerning these matters between myself and the DPP's they have expressed their difficulties in dealing with these cases and have welcomed the PCLU playing the role set out in the guidelines. It also makes sound sense to centralize all these matters in

your office so as to ensure consistency in decision making and to fast track investigations and prosecutions.

30.4

The criminal charge against myself

I was shocked to be informed by Commissioner de Beer that I had been implicated by De Kock and another Vlakplaas operator, Snyman as having attempted to protect Director Human of SAPS who had been accused of ordering the murder of an Askari. I established that these allegations related to a docket which had been opened in Mpumalanga in respect of the shooting of the Askari by Captain Koekemoer of the Murder & Robbery Unit. The original docket had been submitted to a Magistrate to hold an inquest and the Magistrate had accepted Captain Koekemoer's version that he had acted lawfully in self-defence. I furthermore established that thereafter, an amnesty application had been held where Snyman had implicated Director Human, who was the former Head of the D'Oliveira Investigation Unit, which had investigated a number of cases against the security branch and Adv de Jager, who was a deputy in Dr D'Oliveira's office and involved in overseeing these investigations. The amnesty record shows that the allegations involving Human and De Jager were investigated and that there were discrepancies between the versions of Snyman, De Kock and another Vlakplaas operator. I was in no way implicated in this hearing. I was at no stage involved in the investigation of this incident. I have been informed that this incident was one of several cases in which a decision was taken not to prosecute by Dr Ramaite, when he was the DPP, Pretoria, acting on the advice of a Senior Deputy and Senior State Advocate. This decision had also been confirmed by Mr Ngcuka. I have made a statement to the investigating officer in which I in detail denied the allegations. My office also assisted the investigating officer by handing over documentation which was relevant to the investigation. I therefore regard the allegations by De Kock and Snyman as false. I am quite sure that a perusal of the evidence will confirm this. Warning statement is attached.

(Annexure "M")

31.

Alleged acrimony between the National Commissioner and myself

I have had no direct confrontations with Commissioner Selebi and in fact, I have never had any personal dealings with him. I can only speculate as to the reason for the alleged animosity.

31.1 It would appear that Commissioner Selebi has an obsession concerning a non-existent attempt on my part to prosecute the President and other prominent ANC leaders. It may be that he was placed in an embarrassing position as a result of his original allegations which were disproved and this coming to the attention of both Minister Maduna and Mr Masella, whom I take it, would have reported it to the President. See also the Secret Internal memorandum addressed to our Minister, especially pages 4 – 9.

(Annexure "I")

31.2 I was informed that there was ill feeling between Mr Ngcuka and himself and I can again speculate that I was perceived as being an ally of Mr Ngcuka.

31.3 It would also appear that he erroneously believes that the PCLU is part of the DSO and his feelings concerning the DSO are a matter of public record. My involvement in the Khampepe Commission may also be held against me.

(Annexure "J")

31.4 In certain matters accorded a high profile by SAPS, my unit declined to prosecute. In one such matter, the suspect has instituted a multi-million rand suit against SAPS and justice. In another matter, he requested that the docket not be read by my staff member, but by persons in the DPP Office, Pretoria. The DPP who read the docket also agreed that there were no grounds to charge the suspects and eventually, the complainant also accepted that there was no such case.

31.5 In certain cases, members of my staff have complained about poor police investigations. These complaints however were always done in a constructive manner

and not intended to in any way damage SAPS.

31.6 I was invited to address the Controlling Body concerning problems with prosecuting South Africans performing security services in Iraq. He attended this meeting and alleged that the NPA was dragging its heels on these matters. Dr Ramatse submitted a detailed letter to him, pointing out that this claim was unfounded. A copy of this letter was also submitted to the political heads who attended the meeting.

31.7 A combination of the above.

32. In the short period of its existence, I believe that the PCLU has proved its worth and achieved considerable success in the fields of:

32.1 Nuclear proliferation;

32.2 Chemical and biological warfare proliferation;

32.3 Conventional arms control;

32.4 Mercenary activity.

In several of these matters the cases have been investigated by SAPS and the PCLU has always given it credit for its work. On an *ad hoc* basis, my staff members have worked long hours of overtime to assist individual police officers in obtaining search warrants and with other complicated investigations.

33. I have, on more than one occasion, spoken to Commissioners De Beer and Pruis and suggested that we meet informally to resolve any differences which may exist between SAPS and the PCLU. After you had informed me of Commissioner Selebi's latest allegation, I also wrote to him, requesting a meeting to discuss the matter. As of the date of this letter, I have not received a reply from him.

(Annexure "N")

34. Despite this "animosity", my staff and I are perfectly willing to work with Commissioner Selebi!

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15

and with SAPS. I believe that this will be to the benefit of our country, as the PCLU's short record to date establishes that when it teams up with SAPS, a significant inroad into combating crime is achieved. I believe that both SAPS and the NPA should have the same object of combating crime and not acting in opposition to each other.

Kind regards


AR ACKERMANN