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15 September, 2017

ATTENTION : Shaun Abrahams
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PROSECUTION OF ALL THOSE INVOLVED IN STATE CORRUPTION

Dear Mr Abrahams

Your reply letter, dated 16 August 2017, in response to our letter of 7 August refers. The contents of your reply are noted. Our reply to your letter is based on information we have gleaned from the public realm and is, to the best of our knowledge, accurate.

We thank you for your explanation of the various pieces of legislation, but note that we are well aware of the roles and responsibilities of the various state institutions set up to deal with criminal activity.

You refer us to the SAPS and the DPCI and we fully agree that those two institutions also have an obligation to immediately and thoroughly investigate where crimes are suspected to have been committed. And indeed, the public believes with good reason that these institutions are spectacularly failing to adequately act on this mandate. However, we do not agree that the NPA is solely dependent on the SAPS and the DPCI for input before the NPA can take action.

You go to great lengths to explain all the different initiatives underway to combat corruption, but you fail to explain why they all appear to be so ineffective in curbing corruption within the SOEs in particular and more broadly and why the looting of the state continues, apparently unchecked by the institutions established to prevent such corruption. While we do not condone inaction by the Hawks, and there is plenty of evidence of this, we understand that once you are aware of evidence of corruption, it is within your remit to initiate a prosecution-led investigation.

There has been a surfeit of evidence of corruption that you do not appear to be acting on. One of the results of this is a tragic loss of confidence in government capacity to deal with

corruption. Another is that citizens and non-governmental groups are having to initiate investigations and civil actions themselves in order to protect the interests of the public and to fill the gap left by your dereliction of duty.

There is currently ample prima facie evidence in the public realm on which you, National Director, have the power to act. We list below only a few current examples linked to only one of about 10 SoEs where shocking evidence of corruption is available. In the following PRASA related cases ample prima facie evidence has been provided by a PRASA investigation, in the press and by private individuals:

1. In the matter of the R3.5b (initially and escalating to R5.7b) **Swifambo Rail Leasing** contract where, as a result of civil action that PRASA was forced to undertake, the court ruled that the tender was so irregular it should be scrapped. In a scathing judgement, Judge EJ Francis highlighted the fundamentally corrupt nature of the contract awarded to Swifambo, and this little-known company was found to have maintained a “criminal” fronting relationship with the Spanish manufacturer of the locomotives. The following information is publically available and the public should be able to expect that the NPA follows up on this, chasing up your colleagues in the Justice, Crime Prevention and Security Cluster, where necessary:
 - The Public Protector’s report, *Derailed*, found that a significant number of the allegations against Montana were substantiated and that in these cases his behaviour amounted to maladministration, and unethical and improper conduct. The report found deep-seated corruption in this state-owned company and recommended that all contracts awarded between 2012 and 2015 worth more than R10 million be investigated.
 - An internal forensic PRASA report that is publically available as part of court documents uncovered more than R14-billion, and possibly as much as R24-billion, in apparent fruitless, wasteful and irregular expenditure that includes the Swifambo deal and others.
 - The scathing high court judgment on the Swifambo matter in July 2017 set aside the tender for locomotives that were too tall to be used on the country’s rail network.
 - The order was placed by a PRASA employee who was lauded by the CEO, Lucky Montana, but had been fraudulently posing as a qualified engineer
 - In the light of inaction by the Hawks or NPA, PRASA decided to take the Swifambo matter to court themselves to have the tender declared invalid based on overwhelming evidence of irregularities.
 - The ex-Chairperson of the PRASA Board, Mr “Molefe’s affidavit implicated the ANC in corruption involving the party (ANC) and Angolan businesswoman Maria Gomes, who is said to be a friend of President Jacob Zuma and also appeared to be friendly with Montana. Molefe alleges that Swifambo’s MD Auswell Mashaba diverted some R80-million of the money paid to Swifambo to Similex, a company of which Gomes is a director, and to lawyer George Sabelo who is a business partner of Zuma’s son Edward. From here the money would be

distributed to ANC accounts. The affidavit includes supporting documents such as financial evidence of the money transfers.” (BusinessLive)¹

2. **Siyangena Technologies** was awarded a R4-billion tender to provide an integrated station-access-management system (Isams) in a tender process that proved controversial from the start and was immediately challenged once awarded. It too has been surrounded by evidence of corruption. The following is among the public information available to yourselves:
 - Bidders who lost out alleged that the tender specifications had been geared to benefit Siyangena Technologies. As a result, several bidders had asked for the bidding fee of R10 000 to be refunded to them and they withdrew from the bid.
 - News24² reports that several rail-industry experts with intimate knowledge of the tender maintain that Siyangena Technologies had an unfair advantage because tender specifications required successful bidders to use security products such as cameras and access gates that only Siyangena was licensed to use and distribute in the country.
 - Rapport has previously revealed that Lucky Montana, PRASA’s erstwhile chief executive, bought properties worth R25m in cash transactions that were facilitated by a lawyer linked to Siyangena Technologies. Although Montana and Riaan van der Walt, the lawyer in question, have repeatedly denied that their “business relationship” was in any way linked to the contracts Siyangena secured from PRASA there is clearly enough evidence to warrant a prosecution-led investigation.
 - In August last year, News24 revealed that Siyangena had channelled payments in excess of a staggering R550-million to companies owned by Roy Moodley, a politically-connected businessman from Durban with close links to President Jacob Zuma.
 - PRASA went to court to have the contract overturned but the case was thrown out on the purely technical basis of the complaint being lodged outside of the specified timeframe of 180 days. The judge did not even look at the evidence. The judge in the Swifambo case took a very different view of this issue noting that the weight of evidence outweighed the issue of time frames. The SCA confirmed the ruling.

We understand that the time limits do not apply in criminal cases and would like to indicate that we and the public will expect the NPA to lead a criminal case based on the merits of the civil case that was ruled out of time. We would like confirmation that this is happening.

3. **Only time-expired promises of action from the NPA.** NPA promised to communicate decisions on prosecutions arising from these two cases. On the two matters outlined above, we specifically note the following statements by your spokesperson, Luvuyo Mfaku, as reported in the Mail and Guardian newspaper and ask for immediate information on the progress of this investigation and the expected time line for its prosecution:

¹ Exclusive: PRASA locomotive contractor paid ANC “fundraisers”; News 24, 10th March 2017

² <http://www.news24.com/SouthAfrica/News/Lucky-gets-lucky-after-R3bn-deal-20150531>

- In July 2017, the National Prosecuting Authority (NPA) is reported to have said it may decide at the end of July 2017 whether or not it will prosecute anyone over allegedly corrupt contracts worth billions of rands awarded by the Passenger Rail Agency of South Africa (PRASA). The NPA said that its Specialised Commercial Crime Unit (SCCU) has received more than 60 lever arch files from the Hawks relating to criminal probes into PRASA's R3.5-billion contract for the supply of new locomotives and contracts worth R4-billion for security-related products and services.³
- "Prosecutors were directed to furnish the head of [the] SCCU with a report by the end of July 2017 on whether the investigation is complete and a decision if so," said NPA spokesperson Luvuyo Mfaku.
- Mfaku said the NPA will take the [Swifambo] judgment into consideration. "The NPA has noted the judgment of the High Court in the PRASA matter. "The Asset Forfeiture Unit (AFU) in Johannesburg is working closely with criminal investigators from the Hawks and prosecutors from the SCCU in respect of the PRASA investigation and the judgment will be a factor to be considered in the ongoing investigations, which may lead to the recovery of any losses," Mfaku said.

We are expecting to hear from you on when prosecutions will take place rather than whether they will take place. A lot of NPA time appears to be spent of finding ways to avoid rather than speed up criminal charges in these many cases affecting the SoEs.

4. Clear evidence of a **reluctance to investigate and prosecute by the NPA and Hawks** despite a mound of evidence of corruption forces PRASA to resort to a court case to force you to do you jobs.
 - In the process of trying to cancel the two contracts awarded to Siyangena Technologies and Swifambo Rail Leasing worth R4bn and R3,5bn respectively, Mr Sifiso Buthelezi's successor, Popo Molefe, has claimed in court documents, under oath, that Montana benefited personally and irregularly from PRASA contracts and that, as noted above R80 million in kickbacks have secretly been siphoned off to the ANC.
 - A Daily Maverick article lists some of the recommendations and findings of a National Treasury enquiry based on the Public Protector's recommendation to examine contracts above R10m at PRASA which include:
 - The Chairperson of the Board up until 2014, and current Deputy Finance Minister, Mr Sifiso Buthelezi, and his fellow board members must be criminally charged for contravening several sections of the Public Finance Management Act (PFMA) in the course of the awarding of at least 30 contracts - an offence that can lead to a hefty fine or up to five years in jail;

³ <https://mg.co.za/article/2017-07-10-npa-eyeing-prosecution-over-prasa-billions>

- Crucial and confidential documents were lost, stolen and destroyed, hampering an in-depth investigation, possibly concealing the culpability of PRASA's management;
- The former group CEO Lucky Montana must be criminally charged for his role in several contracts and his relationship with some service providers must be investigated by the police.
- Findings by the investigative teams include that Buthelezi's board failed in their fiduciary and general responsibilities by not taking "steps to prevent irregular expenditure", were slack on internal controls and did not take reasonable steps to protect PRASA's records.
- During Buthelezi's tenure, PRASA developed a "culture of poor record keeping", has "systematically failed to comply" with its own rules and became a "disgrace to the public sector", three auditing firms found.
- The damning findings by the Deputy Minister's own department will be reported to the Public Protector, the Office of the Chief Procurement Officer (OCPO), a department in National Treasury, said.
- A News24 report revealed that the ex-Board Chairperson, Sifiso Buthelezi, might have personally benefitted from R150 million in PRASA contracts. On the back of accusations that Buthelezi seemingly turned a blind eye to rampant corruption in PRASA, the police must now investigate whether he benefitted through a series of companies and front businessmen, including his brother.⁴
- As reported in the press, when asked about the latest developments in the NPA's possible prosecution in relation to the Swifambo and Siyangena contracts, Auswell Mashaba and Pragason Subba Reddy, the two companies' respective managing directors, said that they were not aware of any new developments.
- At a minimum, these charges need to be urgently investigated to clear the names of those who hold or held important public or private offices but have been publically sited as benefitting from corruption.
- We note⁵, for example, that inaction of the Hawks and NPA may have contributed to the continuing spate of murders in Umzimkhulu municipality in KZN, it can cost lives. In this case, councilors and officials appear to have tried to report corruption only to be met by stony silence and inaction, thus exposing those reporting and, it has been alleged, failing to prevent funds going to the assassins.
- There has been no prosecution of Montana, the relevant Chairperson and Board members and the key players and 'beneficiaries' of corruption based on the mass of evidence that appears to be available. This is despite the Swifambo court judgment, the Public Protector's finding that a significant number of the allegations against Lucky Montana were substantiated and that in these cases his behaviour amounted to maladministration, and unethical and improper conduct and the findings of an internal enquiry that he had been implicated in improper tender procedures, maladministration, corruption, conflicts of interest, financial mismanagement, nepotism and the improper handling of whistle-blowers that led to the early termination of his contract in July 2015.

⁴ dailymaverick.co.za%2Farticle%2F2017-06-10-scorpio-prasa-treasury-investigation-recommends-sfiso-buthelezi-be-criminally-charged%2F&usg=AFQjCNGUxTfVWslTz3n_YVWo7c2ggW3wWg

⁵ Mail & Guardian, September 8th – 14th, 2017, page 9

- This pattern is sickeningly familiar. The NPA hides behind the Hawks despite the mountain of available evidence, investigations and analysis on which to base prosecutions. Where you cannot deny receiving completed investigations, action is promised without being actually taken. To date, the Directorate for Priority Crime Investigation or Hawks has had about 20 months to tackle the complaints brought to it by PRASA and its board, headed by then chairperson Popo Molefe. Has the NPA made any enquiry in this regard?
- As the previous Chairperson of the Board noted in an interview with the Citizen newspaper "We have done a lot of investigations, we have put before the Hawks more than 41 cases".
- Based on the inaction of the Hawks and yourselves, PRASA has had to take the unusual step of going to court in a bid to compel a fellow state agency to do its job. A case has been opened to compel the NPA and the Hawks to conduct and/or bring to finality that list of 41 priority cases.
- This 'mandamus' case is built on the findings of several other inquiries and cases as noted above, detailed evidence based reports by the public protector, reports of the auditor general and a massive and thorough investigation by the treasury into alleged misdeeds at PRASA all of which are available to you.
- TimesLIVE reported in June 2017 that the Hawks had failed for two years to investigate two PRASA contracts worth more than R9bn, according to court papers.
- When PRASA made an application to the High Court in Pretoria asking it to declare that the Hawks had failed to conduct the investigations and coordinate their inquiries with the National Prosecuting Authority, the Hawks indicated that they would oppose the application.

Given that it is obviously in the public interest to resolve these cases, we expect you not to oppose this case, to proceed with prosecution-led investigation and to put pressure on your counterparts in the Hawks not to oppose a case that is clearly in the public interest but to actively investigate the relevant cases.

Your choice of inaction is what we are noting and objecting to. We reject your suggestion that our comments on your inaction are incorrect and misplaced and that we do not understand your powers.

What we understand is that Section 22 of the Prevention and Combatting of Corrupt Activities Act, 12 of 2004, states that whenever the National Director of Public Prosecutions has 'reason to suspect' that any property may be the proceeds of crime, he may institute an investigation in relation to that property. There is abundant evidence in the public realm (with only some examples cited above) to institute such an investigation, seize property and appoint a special investigator who does not have to be a police official. For example, the admissions in Parliament that Eskom paid over money illegally to Trillian is sufficient for you to seize the Trillion bank accounts while taking a special investigation forward to prosecute any criminality and recover the stolen funds.

You could also institute an investigation under Section 23 of the same Act into all those persons where evidence suggests that they may be in possession of wealth that is

completely disproportionate to their known sources of income. These powers of investigation, vested in your position, include the powers to summon and question people and search property.

The Gupta's are currently selling off their assets, which much public evidence suggests are the proceeds of criminal activity. There is clearly enough evidence in the leaked emails to suggest that the sale of these assets by the Gupta family should be interdicted and their assets seized until such time as the numerous cases where prima face evidence of criminality exists have been investigated. Under Section 26 of the same Act, you have the power to prevent the sale, disposal or transfer of these assets. You have clearly chosen not to exercise any of these powers in instances of reported corruption affecting the various SOEs listed in our previous letter.

Evidence in the public realm suggests that your department is not only failing to exercise the powers it has, but that it is frustrating numerous investigations into corruption such as those into the various PRASA tenders.

Ongoing delay by you and your department in taking any action in these numerous cases of alleged corruption is a serious failure to fulfil your constitutional and statutory duties, and opens you and your department, in turn, to investigation and/or prosecution.

You end your letter with the statement that you will continue to exercise your constitutional mandate without fear, favour or prejudice. With respect, National Director, you have failed the citizens of South Africa dismally by not upholding your Constitutional obligations to protect the public assets of this country from being brazenly plundered. Your failure to protect the citizens is impacting on millions of South Africans across the country, contributing substantially to the collapse of basic services such as Metrorail, water and sanitation services, Eskom and SASSA grants. In all these cases, the greatest impact is being felt by the poorest of the poor. The collapse of the rail services is one example where commuter lives are being put at risk daily and some are being lost, just in the struggle to get to work on time or to school or home again. These are ordinary actions citizens have to engage in every day and they do so with fear, frustration and anxiety because corruption and theft has led to the service they rely on so heavily to fail them at every level.

Failure to act encourages further attempts to loot state coffers. It also encourages criminals across the board to become more and more brazen, as they know they have little to fear from the institutions mandated to uphold safety and security.

We reiterate our demand that you take action in all these instances where there is already sufficient evidence in the public realm to do so. We also reiterate our demand that you proceed immediately with reinstating the 783 charges against Jacob Zuma, particularly given the concession made in the Supreme Court of Appeal, on the 14th September, 2017, by Advocate Kemp J Kemp that the decision not to prosecute was irrational.

Finally, we request that you provide detailed responses to this letter by no later than Friday 28th September, 2017.

Yours Sincerely

ZELDA HOCTZMAN

Zelda Hoctzman

Signed on behalf of the 130 people who have associated themselves with the UDF Veterans
(Western Cape)