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**Our ref. DJ Eloff / MAT4136**

**Your ref:**

22 October 2021

**OFFICE OF THE PUBLIC PROTECTOR**

Hillcrest Office Park,  
175 Lunnon Street,  
Brooklyn,  
Pretoria

**By hand**

**By e-mail:** [registration2@pprotect.org](mailto:registration2@pprotect.org) ; [JHBregistry@pprotect.org](mailto:JHBregistry@pprotect.org)

**RE: ISSUES SURROUNDING DNA EVIDENCE – BACKLOG IN PROCESSING AND PROBLEMS FACED WITH THE PCEM SYSTEM**

1. We refer to the above-mentioned matter and confirm that we write to you on behalf of Action Society, a registered non-profit company and civil rights organisation (hereafter referred to as “our client”).
2. Our client acts in the interest of its supporters and the interest of the public through active advocacy for policy change and effective implementation of policy. Action Society seeks to facilitate their stated aims of mobilising change and supporting the vulnerable in need of such support. Action Society is also driven by a purpose to provide a voice to the voiceless and recourse to those who have been let down by the institutions that should protect them.

## **INTRODUCTION**

3. This letter must be read with the attached affidavit in support of the lodging of a complaint with the Office of the Public Protector regarding the abovementioned matter. This affidavit has been attached evenly hereto, along with several annexures containing information which will provide further information and aid the Public Protector in their investigation.

## **CONTEXT AND BACKGROUND INFORMATION**

4. As a point of departure, the problem brought before the office of the Public Protector will be discussed against the backdrop and in the context of social problems faced by our nation. News reports by News24 and Rapport have in the past year brought to light the horrific fact that the South African Police Service have “lost” up to 8 million pieces of forensic evidence, including DNA samples crucial to determining the outcome of many rape- and gender-based violence (hereafter GBV) cases.
5. Victims of GBV, their families and the broader public have been made to look on, powerless, as the police can no longer say with certainty where the evidence crucial to the outcomes of their criminal trials are. This is due to the inability of the SAPS to pay the agreed fees for the PCEM system, as per the terms of their contract with Forensic Data Analysts (FDA), the company who own the PCEM Software. This dispute between the State Information Technology Agency SOC Ltd (hereafter referred to as Sita) and FDA has turned in court 9 times in recent years, with Sita claiming every time that the data captured in the PCEM system is their intellectual property, not that of the FDA. They have repeatedly chosen to pursue costly litigation and have lost every single time, having cost orders granted against them as well.
6. The erosion of public confidence in the justice system is clear from studies on public confidence in our police. Studies by the Institute for Security Studies point out that South Africa has been showing trends of higher arrests for many years and that the police are in most cases able to identify the alleged perpetrator. Worryingly, studies then continue to show that despite more arrests being affected, that there is not a commensurate rise in convictions. In fact, the opposite is true. The Institute for Security Studies firmly states that:

“In summary, while the SAPS is reporting a substantial increase in the number of arrests and court-ready dockets, the NPA is reporting a substantial reduction in the number of cases with verdicts over the past decade. Unfortunately, because of the inability of the CJS to implement an integrated information management system, we cannot tell what exactly the problem is and how to fix it.”

7. It is clear with conviction rates already as low as they are, the last thing that the SAPS can afford to let happen is to “lose” vital evidence, or have the backlog continue to grow as is currently the case. Much of the 8 million pieces of evidence lost could very well mean the difference between justice being done, and being seen to be done, or the perpetrators of GBV walking away scot-free, back into their homes to continue patterns of rape, domestic abuse and other instances of GBV. From the above study it is also clear that the need for better information management has been a problem in the SAPS for some time. Since 13 June 2020, most of the functionality of the PCEM system has been switched off, meaning that police are no longer certain where and how to find forensic data, what has been worked on, or even whether it has been tampered with.
8. Even though the South African government has committed itself to combatting GBV, which remains a persistent issue, it seems as if these purported commitments by the national government are mere empty promises and lip service. President Cyril Ramaphosa during his 2021 State of the Nation Address restated the commitment of government to “reducing the backlog of gender-based violence cases”. A mere month later the news broke that the PCEM system was not functioning.
9. In December 2015 the United Nations Special Rapporteur on Violence against Women upon visiting South Africa noted the following regarding South Africa’s efforts to fight GBV:
 

*“Despite an arsenal of progressive laws and policies to deal with gender-based violence put very ably in place, starting with the Constitution which guarantees to all South Africans the right to live in dignity and free from violence, , the Domestic Violence Act, the Sexual Offenses Act, the Family Violence Act, to name but a few , there has been little implementation, hence impact and gender-based violence continue to be pervasive and at the level of systematic women’ human rights violation.”*
10. It is evident that South Africa, and particularly the women and rape victims of South Africa suffer from GBV not due to a lack of legislative protection, but solely due to the abhorrent

failure by government to effectively implement the legislative tools at their disposal in any real and practical manner.

## **POWERS OF THE PUBLIC PROTECTOR**

11. In light of the above, it is clear that the Public Protector as a Chapter 9 institution must step in to live up to the name and protect the public. Each day of delay means less access to justice for victims and more perpetrators going free in South Africa, which carries the despicable title of being the rape capital of the world. Section 6(4) of the Public Protector Act 23 of 1994, (hereafter "the Act") grants the incumbent Public Protector the powers to investigate any alleged maladministration in connection with the affairs of government at any level.
12. Moreover, the Public Protector may investigate any abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function, as well as any act or omission by a person in the employ of government at any level, or which performs a public function, which results in unlawful or improper prejudice to any other person.
13. Action Society submits that the predicament faced by South Africa which is caused by the clear maladministration of the criminal forensic analysis system and the unfortunately horrendous performance or lack of performance of a crucially important public function. It is therefore submitted that not only is your office at liberty to conduct this investigation, but it is evidently warranted and indeed resolutely necessary.

## **PARTIES RESPONSIBLE AND NATURE OF OMISSION AND/OR TRANSGRESSION**

14. The parties responsible which must be investigated are the Minister of Police Bheki Cele, the DNA Oversight Board, the SAPS, Sita and the President of the Republic of South Africa. These parties have, through their inaction, or alternatively their unduly delayed and insufficient actions allowed this status quo to persist much longer than is acceptable.
15. The persistent inactions and incompetence of the SAPS, from ground forces to Bheki Cele and the DNA Oversight Board *inter alia* are continuously eroding the public confidence in the

criminal justice system of the Republic. The DNA Oversight board are not taking their responsibility, which stems from Constitutional mandate of the SAPS, seriously.

16. Our client has contacted the Board and have requested an update on the current state of affairs concerning the backlog and the turnaround strategy implemented, but the board did not supply any answers and referred the request to the Forensic Science Lab (FSL). The DNA oversight board was appointed by Bheki Cele in June 2020. In their mandate it states they must meet quarterly – yet they have only convened once since their inception. In March 2021, the SAPS have announced they have implemented a turnaround strategy. In March, the DNA backlog was at 172 787 and at the time of writing this letter, stands at more than 300 000. Needless to say, the turnaround strategy is not providing the desired turnaround. Thousands of rape victims are not getting their day in the court. Action Society submits that this has become a human rights violation which undermines South Africans’ Constitutionally entrenched rights to equality, fair administrative action as well as access to courts.

## SUMMARY OF GROUNDS FOR INVESTIGATION AND RELEVANT INFORMATION

17. On 6 August 2021 SABC News reported the following in the Article “*Concerns over growing SAPS DNA backlog*”<sup>1</sup> based on a media briefing by the Minister of Police. The number of cases which are affected by the DNA backlog crises in the Forensics Division of the SAPS are currently at more than 300 000.
18. In an article written by Gillion Bosman, the spokesperson for the DA in the Western Cape, it has been reported that the robotics machines used in the processing of DNA samples which relate to GBV cases at the South African Police Service (SAPS) Forensic Science Laboratory in Platteklouf, Cape Town, have been **out of order** since 2019.<sup>2</sup>

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<sup>1</sup> SABC News ‘Concerns over growing SAPS DNA backlog’ 6 August 2021 <https://www.sabcnews.com/sabcnews/concerns-over-growing-saps-dna-backlog/>

<sup>2</sup> Daily Maverick ‘Huge DNA processing backlog in western Cape- broken machines hamper fight against GBV’ Gillion Bosman, 3 August 2021 <https://www.dailymaverick.co.za/opinionista/2021-08-03-huge-dna-processing-backlog-in-western-cape-broken-machines-hamper-fight-against-gbv/>

19. The delay in the processing of DNA test for cases which relate to GBV leads to the denial of justice for the victims and their families. The results for these DNA tests take more than two years to collect, whereafter the matter still has to proceed to trial.<sup>3</sup>
20. In the month of April 2021, the management of the South African Police Service stated that the backlog in forensic laboratories are being handled and that priority will be given to cases which relate to GBV.<sup>4</sup> We however know that in August of 2021, the number of DNA backlog cases increased to 300 000, as referred to above.<sup>5</sup> It is therefore clear that the SAPS does not have this matter under control and that there is a need for the investigation and intervention of the matter by the Public Protector.
21. We attach as “**Annexure A**” a list of articles to substantiate the grounds for the investigation, which should be of assistance, and which should in our view be considered.

## **NATURE OF PROBLEM AND CALL TO INVESTIGATE**

22. This letter and accompanying affidavit serve as a report to the Public Protector in terms of section 6(1) of the Act, whereby we request the Public Protector to investigate the following in terms of the powers bestowed by section 6(4) of the Act, as matters of extreme urgency:
  - 22.1. The failure to deal with the backlog of DNA evidence in a sufficiently expeditious manner;
  - 22.2. The failure to effectively manage and maintain the PCEM system;

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<sup>3</sup> News 24 ‘Eastern Cape man accused of raping, murdering 5 year old girl in 2019 arrested’ Jenni Evans, 2 August 2021  
<https://www.news24.com/news24/southafrica/news/eastern-cape-man-accused-of-raping-murdering-5-year-old-girl-in-2019-arrested-20210802>

IOL ‘Brand murder case a stark reminder of how DNA backlog crisis is delaying justice’ 22 July 2021  
<https://www.iol.co.za/news/south-africa/northern-cape/brand-murder-case-a-stark-reminder-of-how-dna-backlog-crisis-is-delaying-justice-af693eb3-8fd4-40c3-9252-57a1c4f57eff>

<sup>4</sup> Sowetan Live ‘Police say DNA backlog at forensic laboratories is being dealt with’ 26 April 2021  
<https://www.sowetanlive.co.za/news/south-africa/2021-04-26-police-say-dna-backlog-at-forensic-laboratories-is-being-dealt-with/>

<sup>5</sup> SABC News ‘Concerns over growing SAPS DNA backlog’ Belinda Pheto, 6 August 2021  
<https://www.sabcnews.com/sabcnews/concerns-over-growing-saps-dna-backlog/>

22.3. The failures and undue delays in implementing measures necessary to enable the SAPS and the judicial system to efficiently combat rape and GBV.

23. We trust you appreciate the seriousness of these issues and are moved by their damaging effect on the public, and as such we eagerly await your response and swift and decisive action herein.

Yours faithfully,

**HURTER SPIES INC**

Daniël Eloff

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