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Adv Shaun Abrahams

The National Director of Public Prosecutions

National Prosecuting Authority Head Office

Per email: psmabanga@npa.gov.za c/o Ms Mabanga, Executive Assistant to the NDPP

Adv Ketani

National Prosecuting Authority Head Office

Per email: ddketani@npa.gov.za

Adv Xolisile Khanyile

Director of Public Prosecution, Free State

Per email: xkhanyile@npa.gov.za

Dear Adv Abrahams, Adv Ketani and Adv Khanyile

Delays in *State v Malakoane and 6 others* (case number 308/2013) and the investigation into MEC Malakoane and others in case number 219/09/2014

1. We write to express our concerns regarding ongoing delays in the prosecution of the above matters.
2. The events to which the matter *S v Malakoane and 6 others* regards took place in 2007 and 2008. The prosecution has been repeatedly postponed over several years. Most recently, the matter was set down for trial on 16 May and then once again postponed to 21 July. We understand that Adv Ketani is responsible for this matter. He has not, however, responded to our attempts to contact him for information.
3. In the latter case, the TAC officially brought the matter to the attention of the SAPS on 1 September 2014. The complaint can be found here: <http://bit.ly/1vHL7kg>. Over 20 months later, the investigation remains incomplete. The Free State Health Coalition marched to the Park Road Police Station and the offices of the Free State Prosecuting Authority on 12 March to demand the investigation be completed and the prosecution be initiated urgently. Our memorandum can be found here: <http://bit.ly/20ewxzl> and a related article can be found here: <http://bit.ly/1ODiIVd>. The Free State Prosecuting Authority responded to our memo on 19 May. The response, however, did not address our questions. The response can be found here <http://bit.ly/1VdyJrN>. We remain unclear as to the reasons behind the delays in the investigation, and no clear timelines have been given as to when the prosecution will begin.
4. We are concerned that such long delays in bringing to justice those who abuse positions of power for personal gain threaten the real and perceived integrity of the justice system as well as cultivate a culture of impunity amongst the corrupt. The poorest and most vulnerable amongst us feel hardest the impact of these conditions. To the mother from Virginia who lost her baby because MEC Malakoane pilfers the coffers of the Free State health care system, the delay in bringing him to



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justice adds insult to tragedy. To the young girl in Welkom who cannot access Antiretroviral Treatment because MEC Malakoane thievs the resources meant to fund her care, the impunity MEC Malakoane enjoys is unacceptable.

5. In the matter *State v Tsoaeli and others* (Case no. 21/939/2014), your offices encouraged and lavished resources on the prosecution of over 100 Community Healthcare Workers who dared to take part in a peaceful vigil against MEC Malakoane. To them, it is hard to believe that justice is dispensed without fear or favour when your offices are so eager and efficient in prosecutions of the poor who challenge the MEC yet so dilatory in prosecuting the MEC himself for crimes of a far more serious nature.

6. We therefore request that:

- a. The National Prosecuting Authority encourage the Free State Prosecuting Authority to respond properly to our memorandum and act without delay in investigating and prosecuting MEC Malakoane. Moreover, should the Free State Prosecuting Authority require additional resources in this matter, we call upon the NPA to avail them.
- b. The National Prosecuting Authority to respond to this letter with an explanation of the delays and of the way forward in the matter *State v Malakoane and 6 others*. We request that an appropriate and informed person be identified with whom the TAC may liaise in regard to the matter.

7. We look forward to an urgent response to our letter. Please kindly confirm receipt.

Sincerely,

Anele Yawa
General Secretary
Treatment Action Campaign
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