



National Prosecuting Authority
South Africa

OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

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MINISTERIAL MEMORANDUM

29 APR 2026

PROSECUTING AUTHORITY

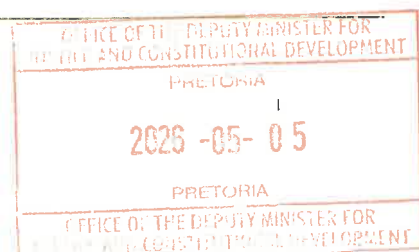
To: MS. MT KUBAYI, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

From: ADV. A MOTHIBI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Subject: REQUEST FOR APPROVAL FOR THE ENGAGEMENT OF SERVICES IN TERMS OF SECTION 38(1) OF THE NATIONAL PROSECUTING AUTHORITY ACT, ACT 32 OF 1998: ADVOCATE SIKHAKHANE SC AND ADVOCATE SHAI IN THE MATTER OF THE STATE v EPRHAIM TLHOMEDI MFALAPITSA AND CHRISTIAAN SIEBERT RORICH.

A. PURPOSE

1. The purpose of this memorandum is to request the Honourable Minister to approve the appointment of **Advocate Sikhakhane SC and Advocate Shai** in terms of section 38 (1) of the National Prosecuting Authority Act, 32 of 1998 (**hereinafter referred to as "the Act"**), as amended, to prosecute in the case of *S v Mfalapitsa et al.*
2. Section 38(1) of the Act provides that a Director of Public Prosecutions may, in consultation with the Minister of Justice and Constitutional Development and the National Director of Public Prosecutions, on behalf of the State, engage, under agreement in writing, persons having suitable qualifications and experience to perform services in specific cases and/or any other related services.



B. BACKGROUND

3. The accused stands before the Court on the following charges:

COUNT 1

KIDNAPPING

COUNT 2

The crime against Humanity of Murder, read with Section 232 of the Constitution, alternatively, Murder read with the provisions of Sections 91, 92, and 258 of the Criminal Procedure Act 51 of 1977.

COUNT 3

The crime against Humanity of Murder, read with Section 232 of the Constitution, Alternatively Murder, read with the provisions of Section 91,92 and 258 of the Criminal Procedure Act 51 of 1977.

COUNT 4

The crime against Humanity of Murder, read with Section 232 of the Constitution, Alternatively Murder read with Section 91,92 and 258 of the Criminal Procedure Act 51 of 1977.

COUNT 5

The crime against Humanity of Apartheid read with Section 232 of the Constitution

4. The matter is currently at the Supreme Court of Appeal (SCA), where Heads of Argument have already been filed by the Appellant on 6 April 2026, and respondents have a month within which to file their Heads of Argument.

C. THE FACTS

5. Accused 1 was an askari, which is the term used to describe erstwhile members of the liberation movements, particularly the African National Congress (ANC), who joined the South African Police Force Security Branch (hereinafter referred to as the Security Branch) and were working against their former comrades. Before accused 1 defected to the Security Branch, he had a close relationship with two brothers of one Zandile Musi (Musi), who served with him in Mkhonto we Sizwe (MK), the military wing of the ANC in exile.
6. After accused 1 joined the Security Branch, he and Musi established contact. Musi was a member of the Congress of South African Student (COSAS), a then popular national student movement active at secondary schools and associated with the ANC. Musi was desirous of leaving South Africa to join the ANC with his comrades, and he discussed the possibilities of leaving the country with accused 1, whom he erroneously still regarded as a member of MK, as the accused's defection to the Security Branch was a closely guarded secret.
7. Accused 1 was stationed at Vlakplaas, a secret security police base at the time. He reported his conversations with Musi to his Commander at Vlakplaas, Jan Carel Coetzee (Coetzee).
8. Accused 1 was in due course ordered by Coetzee to lure Musi and the deceased, who were Musi's fellow members of COSAS, to a pumphouse at a mine near Krugersdorp, under the pretence of wanting to give them military training.
9. A vehicle would be acquired, which was to be driven by one Joseph Mamasela, a fellow askari from Vlakplaas who pretended to be a taxi driver hired by accused 1 to transport the students, along with accused 1 to the pumphouse. The arrangement was that once the students were inside the pumphouse, accused 1 was then to leave the pumphouse under the pretext of wanting to fetch more arms for training from the vehicle, and once he was far away from the pumphouse, the explosives would be detonated, killing the students.

10. The deceased and Musi were to be killed in an explosion under circumstances which would create the false impression that they blew themselves up while undergoing military training. This order to kill the students in this manner emanated from senior officers within the security branch and was conveyed to Coetzee by his superior Willem Frederick Schoon.
11. Coetzee arranged with accused 2 who was a Security Branch explosives expert, to place the explosives inside the pumphouse and to detonate them on the signal of Coetzee. Another security branch officer Abraham Grobbelaar had to accompany Coetzee on the mission and act as a lookout.
12. On 15 February 1982, the above-mentioned plan and arrangement went accordingly. Accused 1 got the students to be transported by Joe Mamasela as a taxi driver to the pumphouse. The students were taken into the pumphouse by accused 1. The pumphouse was full of explosives placed by accused 2.
13. Accused 1 left the students in the pumphouse, and accused 2 detonated the explosives, killing the deceased instantly. Musi survived but was severely injured. The cause of death was multiple injuries.

D. MOTIVATION FOR THE SECTION 38 APPOINTMENT

14. The accused thwarted the commencement of the trial ad nauseam, inter alia, by technical and disingenuous applications, which have all been dismissed, effectively obstructing the commencement of the trial, despite the State's vigorous attempts to proceed, which must be considered concomitantly with the complexity of the crimes for which the accused stands arraigned.

Examples of the reasons for postponements and delays include:

15. Accused 2, Christiaan Siebert Rorich wanted the SAPS to fund his defence. This has caused numerous postponements since the SAPS refused to fund his defence. The court in terms of section 342A ordered the SAPS to fund accused two's defence. Accused 2 was to be afforded a senior counsel and his junior. The SAPS at some stage intended to appeal the ruling of the court and such was later abandoned.

16. Accused 1 raised his intention to review the decision of the TRC for denying him amnesty. Such application was dealt with in the civil court and the application was dismissed.
17. At some stage when the matter was to commence, the defence challenged the validity of the charges in terms of section 85 of the Criminal Procedure Act 51 of 1977. Their objection was based on the wrong perception that the charges of Humanity of murder had prescribed. The objections were argued in court, and the application was dismissed.
18. The defence lodged an application for the recusal of the Judge. Heads of arguments were filed, and the matter was argued in court. The application for the recusal of the Judge was also dismissed.
19. The defence lodged an application to appeal the challenges of the charges before the SCA, and such application was also dismissed.
20. The defence lodged a further application to appeal to the SCA for the court to dismisses their application for the Judge to recuse himself and such application was also dismissed.
21. The defence approached the SCA by way of a petition to challenge the validity of the charges and such petition was granted on 25 September 2025 under Case number 601/2025.
22. Leave to appeal was also granted in respect of the recusal matter under Case number 628/2025 dated 25 September 2025.
23. The SCA has ordered that both matters i.e., the Section 85 objection and the recusal application be heard simultaneously.
24. It is an urgent request for the appointment of the two counsels to be briefed by the State Attorney on behalf of the NPA.
25. As a result of the volume of the matter, as well as the complexity of the evidence, it is essential that a Senior Counsel and a junior counsel be appointed in terms of section

38(1) of the NPA Act to argue the matter in the Supreme Court of Appeal on behalf of the Prosecution.

26. At present, there are capacity constraints in our division, including other divisions, concerning expertise in international law. There are also heavy workloads of the Advocates, which they must deal with, including other high-profile cases and complex matters; they will thus not be able to deal exclusively with this matter on a continuous basis.
27. The recommendation from LAD is attached and marked as (**Annexure "A"**).
28. Security vetting is ongoing by the security management service, and the results are pending due to the nature of the vetting process. matter and will be available as soon as possible.

E. SCOPE OF WORK AND TRANSFER OF SKILL

29. The Counsels once appointed will have the authority and the power to appear and argue the matter on behalf of the state, and to carry out any necessary functions incidental to instituting criminal proceedings, in the matter of *S v Mfalapitsa et al.*
30. The appointed Counsels are to conduct prosecution on behalf of the State for the duration of the trial which the office estimates will take about 2 years to conclude and includes providing mentorship, guidance and assistance to the state advocates assigned to the case, which is aimed at increasing her individual levels of proficiency in terms of effective planning; management of the case preparation processes and development of the prosecution strategy as well as the practical application of her knowledge and performance in court.
31. The DPP South Gauteng will assign **Advocate Lwazi Ngodwana and Advocate Raymond Mathenjwa** to work with the section 38(1) counsels, which will offer them an opportunity to be mentored and coached by the senior counsel. They are both African males who are currently appointed as Senior State Advocates and Deputy Director of Public Prosecutions in the DPP South Gauteng office.

32. This will promote the much-needed empowerment skills. The mentoring and coaching aspect will be included as contractual obligations of the advocates. Both resumes are attached and marked (**Annexure “B”**)
33. The Counsels shall assist and appear in all proceedings before any Court that may be a direct result of, as well as incidental to, all litigation arising from the prosecution, e.g., appeals, reviews, and all relevant motion proceedings. The Counsels will handle any other documents relating to the trial, appeal, and motion proceedings.
34. Both advocates will conduct their services in full compliance with the terms and conditions as stipulated in section 38(1) of the National Prosecuting Authority Act 32 of 1998, attached hereto terms and conditions and marked (**Annexure “C”**).

F. ESTIMATE DURATION

35. It is anticipated that the trial will take approximately 2 -3 years to finalise, depending on the frequency of interlocutory applications that may be raised during the course of the trial proceedings, which may tend to delay the matter, if raised. It is foreseeable that there will be a lot of interlocutory applications by the accused.

G. ESTIMATED FINANCIAL IMPLICATIONS

36. Adv Sikhakhane SC utilises fee rates that have been agreed with the State Attorney, in terms of the fees structure for Senior Counsel, the applicable tariff is R4 500.00 per hour (excluding vat) or R45000.00 per day, excluding vat. The annual escalation of the rate proposed is in line with the state attorneys' fees, attached and marked (**Annexure “D”**)
37. Adv Shai utilises fee rates that have been agreed with the State attorney, in terms of the fees structure for Junior Counsel, the applicable tariff is R 3 500.00 per hour (excluding vat) or R35 000.00 per day (excluding VAT). The annual escalation of the rate proposed is in line with the state attorney's fees.
38. The NPA shall pay for travel expenses in adherence with the NPA' Subsistence and Travel Policy and National Treasury Instruction Note as published.
39. The 2023 CARA allocation has been fully utilised and the NPA has submitted a new request for additional CARA funds.

40. In the interim, while the outcome of CARA allocations is being awaited, the NPS budget will be utilised.

41. This memorandum complies with all checklists as required by the Minister attached hereto and marked (**Annexure "E"**).

H. CONCLUSION

42. It will be in the interest of justice to match the skills of the accused counsels by appointing an experienced litigator, who are shadowed by allocated advocates in the matter.

I. RECOMMENDATION

43. It is, accordingly, recommended that the Minister approve the appointment of Advocate Muzi Sikhakhane SC and Isaac Shayi in terms of Section 38(1) of the NPA, Act to prosecute in the matter of State versus Mfalapitsa *et al.*



MR L SAKATA

ACTING DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG LOCAL DIVISION.

DATE: 29 APRIL 2026

Engagement of section 38: **Guidelines observed/~~not observed~~**

Comments:



ADVOCATE M MHAGA

SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

LEGAL AFFAIRS DIVISION

DATE: 29/4/2026

RECOMMENDATION

44. It is, accordingly, recommended that the Minister approve the appointment of Advocates Muzi Sikhakhane SC and Isaac Shai in terms of Section 38(1) of the NPA, Act to prosecute in the matter of State versus Mfalapitsa *et al.*

RECOMMENDATION IN PARAGRAPH 1 SUPPORTED/NOT-SUPPORTED Comments:

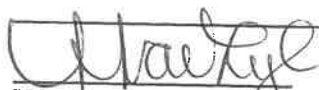


ADV S MZINYATHI
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 29/04/2026

FUNDS AVAILABLE / ~~NOT AVAILABLE~~

Comments:

NPA received R114m CARA
allocation for Sec 38 appointments.



MS HANIKA VAN ZYL
CHIEF DIRECTOR: FINANCIAL MANAGEMENT
DATE: 29/4/2026

RECOMMENDATION

45. It is, accordingly, recommended that the Minister approve the appointment of Advocates Muzi Sikhakhane SC and Isaac Shai in terms of Section 38(1) of the NPA, Act to prosecute in the matter of State versus Mfalapitsa *et al*.

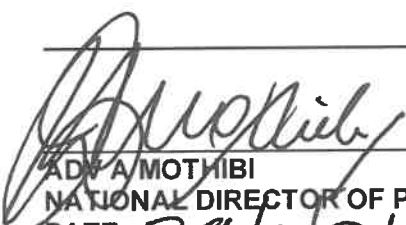
RECOMMENDATION IN PARAGRAPH I: SUPPORTED / NOT SUPPORTED ✓

Comments: As per the comments of the CD: FM.


MS S BALOYI
ACTING DDG: CORPORATE SERVICES
DATE: 28/04/2026

RECOMMENDATION IN PARAGRAPH I: SUPPORTED / NOT SUPPORTED

Comments:


ADV A MOTHEBI
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
DATE: 29/4/26.

RECOMMENDATION IN PARAGRAPH I: SUPPORTED / NOT SUPPORTED
EXPENDITURE APPROVED/NOT APPROVED

Comments:


MS K PILLAY
ACTING DIRECTOR GENERAL OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 5/5/2026

RECOMMENDATION

46. It is, accordingly, recommended that the Minister approve the appointment of Advocates Muzi Sikhakhane SC and Isaac Shayi in terms of Section 38(1) of the NPA, Act to prosecute in the matter of State versus Mfalapitsa *et al.*

RECOMMENDATION: SUPPORTED / ~~NOT SUPPORTED~~

Comments:



MR A. NEL, MP
DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 05/05/2026

RECOMMENDATION IN PARAGRAPH I: APPROVED / ~~NOT APPROVED~~

Comments:



MS. M. KUBAYI, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 07/05/2026