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Higher Education Transformation Network
Non-Profit Organization (NPO) Reg No: 116-851

Our Ref: Dabiko /NWHET/2015

Your Ref: Gouws/ S Delport

Date: 6th March 2015

Dear Sir

RE: NWHET / NWU: HETN PRESS RELEASE DATED 3 MARCH 2015

Your letter of 5 March 2015 refers.

We note that you have given us a ridiculously short period of fewer than five (5) hours within which to read your allegations of defamation and to comply with your demand for a withdrawal. This is insufferably rude, unprofessional and betrays a mind-set in which black persons and their organizations are treated with utter contempt and racist condescension by certain white institutions including law firms. We are not going to be intimidated through such tactics and we shall not refrain from exposing corruption and suspected criminal activity wherever it exists.

Given the self-imposed limitations you have authored, we can only respond to your statements with the information we have at our disposal. We shall provide you with a comprehensive response upon receiving the information and evidence requested herein.

First, you have referred to our 3 March 2015 press statement announcing the filing of criminal charges against former NWU executives. We kindly request that you re-read the press release which you have deliberately misread, misconstrued and distorted in your extant correspondence to us.

In the press release alluded to, the HETN made it clear that it filed the criminal charges based on publicly available information and that the veracity of the allegations was a matter to be determined by the police, prosecuting authorities and ultimately the courts. The following was made perfectly clear: *"'This **alleged fraud case** relates to the **alleged unauthorised** transfer of R10m rands worth of state funds at the North West University (NWU) institution by Prof. Johan Rost, its former Chief Financial Officer (CFO) as a "donation" to a trust named the North West Higher Education Trust (NWHET) **allegedly at the instructions of the former Vice-Chancellor**, Dr Theuns Eloff on the 5th November 2013 to be utilised allegedly "at the trust's discretion".*

You know very well that Dr. Eloff has admitted that in his letter to Council NWU dated 13 November 2014 that when the matter was presented to Council at a meeting in September 2014, it *"elicited comments from certain Council members that [Eloff} should be charged with fraud and corruption."* The proposal to establish a NWHET was *"brought to the NWU by Dabiko."* After "*having received a proposal from Dabiko, the organization was contracted to establish the NWHET, and was paid a monthly retainer to do so."* Once this was done and the Trust established, Bian Jooste (CEO of Dabiko Consulting (Pty) Ltd) was also appointed as one of the first three trustees.

Dr Eloff has admitted that he took certain decisions regarding the alleged donation and *"did not take it to a higher authority."* Dr Eloff has admitted that *"another matter that was raised with suspicion, is the fact that I became associate of Dabiko, the consulting firm that is acting as advisor to the NWHET. I am also using the organisation's email address and server."*

The admission from Dr Eloff raises germane issues of whether there was self-dealing, corrupt relationships and transfer of millions from state/public institution to private hands. You are reminded that in **Thint (Pty) Ltd v National Director of Public Prosecutions, Investigating Director: Directorate of Special Operations and Johan du Plooy; Jacob Gedleyihlekisa Zuma and Michael Hulley v National Director of Public Prosecutions, Investigating Director: Directorate of Special Operations and Director of Public Prosecutions (Durban);** [2008] ZACC 13, the Constitutional Court affirmed that there is no free-standing right not to be named a criminal suspect.

Langa CJ *(may his soul rest in peace)* did not agree with the submission that Zuma's dignity had been infringed when he became named as a suspect in a matter saying: "His right to be presumed innocent was untrammelled". He added: "***There is no right not to be named as a suspect in a criminal matter."*** We reject as nonsensical your claim that our criminal complaint contains factual inaccuracies and defamatory statements and that there *"exists no basis for any criminal charges against Mr. Jooste."* Our statements to the police enjoy absolute and iron-clad immunity and cannot be a basis for a defamation action. After all, it is the duty of every citizen to alert the law enforcement authorities about suspected criminal activities. The police are duty-bound to investigate the truth or falsity of allegations of criminal wrongdoing . At the conclusion of their investigation, they may charge the suspects criminally or clear them of alleged wrongdoing. Your attempt to coerce us into withdrawing allegations that form the basis of the criminal complaint filed with the police is actually criminal attempt to defeat the end of justice.

Secondly, your reference to a forensic investigation by Gobodo, and alleged confirmation by Buchler that he intended to *"record this in his report to the NWU"* is not only a red-herring but it actually confirms the absurdity of your accusation. In the absence of serious suspicion of wrongdoing by your clients, there would never have been a forensic investigation ordered in the first place. This confirms that our criminal complaint is based on prima facie evidence and not merely guesswork. Given that Buchler only revealed his thoughts to you on 3 March 2015 and that the report is yet to be submitted to the NWU, how on earth do you expect us to have knowledge of what Buchler subjectively thinks and what he intends to include in a report yet to be written? Further, why should we take your word as gospel truth and be stampeded into relying on hearsay statements instead of the final forensic audit report? The truth is that you and your clients have a sinister motive and seek to run away from the truth. If you believe that the forensic report will clear them of any wrongdoing why are you acting with such unseemly haste in seeking withdrawal of statements about matters where investigations are still pending?

Thirdly, in paragraph 5 of your letter you take issue with our statement that *"the Network has conducted its own preliminary investigations and is led to believe that a prima facie case of deliberate misrepresentation and intention to defraud exists.* " You deliberately ignore the sentence that reads, *"With your support, we have full trust in the law enforcement agencies and courts to ensure that justice prevails on the matter."* You falsely claim we have not contacted your clients when you know very well that we sought documentation from Dabiko Consulting (Pty) Ltd and your firm rejected our request and refused to divulge any information that would have enabled us to reach a contrary conclusion. It is disingenuous for you to make a bald assertion about us not contacting your clients when your firm invoked every obstructionist and unethical tactic to deny us access to information that would have exonerated your clients. You took the risk that we would rely on the information we have at our disposal and you arrogantly refused to engage with us on these critical matters. Your claim that there are no factual allegations of criminal activities contained in the press statement is equally absurd and exposes your ignorance regarding the purpose of the said press release. The HETN has explained ad nauseum that, *"In registering this criminal case, the Network condemns the illegal privatization of state funding / reserves and believes that the illegal redirection of financial resources of the state held by public universities into private hands without scrutiny or oversight as envisaged by the Public Finance Management Act (PFMA) is tantamount to theft and plundering of the resources of the state."*

Dr Eloff has admitted that he collaborated with a private consulting company, transferred millions of public funds to some entity/trust not controlled by the NWU and has allegedly feathered his own nest by ultimately becoming an "associate" of Dabiko Consulting (Pty) Ltd, the very firm that originated the idea of NWHET. Self-dealing, conflict of interest and uncontrolled transfer of public monies to private hands are usually indicative of criminal activities in case you need a reminder.

Fourthly, your commentary that *"the NWHET was established pursuant to a completely transparent process*" is without any substance and is belied by Dr Eloff's own letter to Council in which he disputes that the current Vice Chancellor, Prof. Kgwadi, was left in the dark about the matter. Dr Eloff also admits that when the matter was presented to Council at a meeting in September 2014, it *"elicited comments from certain Council members that [Eloff} should be charged with fraud and corruption."* Why would responsible Council members hold such hostile views if the matter followed a *"completely transparent process"* as you claimed. In any event, it is simply premature for you to demand that we accept your one-sided, false and disingenuous statements as gospel truth.

Fifthly your longiloquent and rambling statements in paragraph 6 through to paragraph 19 are nothing but an attempt to establish that your clients believe they have a defence to the criminal charges that may be preferred against them. At best they show that there are hotly disputed factual issues concerning alleged conflict of interest, self-dealing and corruption. Your hot air threats of an interdict are not only mischievous but betray a trait that white established firms have nurtured from the apartheid years – bamboozle, intimidate and cower blacks into silence through the use of court interdicts and threats. No responsible court will interdict a citizen from announcing that he has filed a criminal case with the police against another citizen!

And finally, regarding your demand that we withdraw allegedly defamatory statements, we respond as follows:-

We hold that your clients are libel-proof. As you know a "defamatory" statement is a statement which causes harm to reputation. A statement is defamatory if it tends to injure the plaintiff's reputation and expose the plaintiff to public hatred, contempt, ridicule, or degradation. When the defamatory meaning is not apparent on its face, the plaintiff has the burden of pleading and proving such extrinsic facts. To establish a claim in a defamation action plaintiffs must prove that the defendants made false and defamatory statements about them which injured their reputation. But actual evidence of plaintiff's poor reputation is generally admissible to show that his claimed reputation is undeserved. Put differently, if an individual's reputation cannot be further damaged, a defamation suit serves no purpose, wastes judicial resources, and hinders free speech interests.

We intend to prove that each of the three named clients is a "libel-proof" plaintiff. A plaintiff is "libel-proof" when his reputation has been irreparably stained by prior publications or his own misdeeds. At the point the challenged statements are published, then, plaintiff's reputation is already so damaged that a plaintiff cannot recover more than nominal damages for subsequent defamatory statements. As long as the statement upon which the defamation claim is based relates to the same matters upon which the prior bad reputation was founded, or to substantially similar matters. In extreme cases, a plaintiff's general reputation may be so bad that a court will hold a plaintiff libel-proof on all matters. For example, Adolph Hitler could not be damaged by defamatory statements. **Langston v. Eagle Publishing Co.,** 719 S.W.2d 612, 623 (Tex. App. 1986). Dabiko Consulting (Pty) Ltd's entanglements in advising Dr Eloff to set up the Trust and then reaping lucrative consulting fees from setting up the Trust and then having its CEO appointed as a Trustee and then hiring Dr Eloff as an "associate" stinks to high heavens and suggest a symbiotic corrupt relationship. You have not even suggested that there was a competitive bidding process to have Dabiko Consulting (Pty) Ltd appointed as a consultant but you expect us to remain quiet about this flagrant violation of the PFMA?

We also believe that truth is our defence here. You furtively refused to divulge information we specifically requested from Dabiko Consulting (Pty) Ltd amongst others. Unless you disgorge the information and documents we requested, the HETN will be entitled to interpret your clients actions to be cover-up and deceptive. Unless you respond with the documents and evidence we requested we are entitled to assume that the statements published were true. Normally a private defendant is not responsible for any of the plaintiffs' harm, if any, if defendant proves that his /her statement

about the defendant was true. Moreover, defendants do not have to prove that the statements were true in every detail, so long as the statements were substantially true. In cases involving public figures or matters of public concern, the burden of proving falsity is on the plaintiff. One who publishes a defamatory statement of fact is not subject to liability for defamation if the statement is true. Truth, of course, is an absolute defense to any libel action. In order to establish the defense, the defendant need not prove the literal truth of the allegedly libelous accusation, so long as the imputation is substantially true so as to justify the 'gist or sting' of the remark." (Campanelli v. Regents of Univ. of Cal. (1996) 44 Cal.App.4th 572, 581—582 [51 Cal.Rptr.2d 891], internal citations omitted.)

We also intend to argue it is inconsistent with section 16 of the Constitution to permit a plaintiff to interdict free speech or to recover damages for the publication of a statement relating to matters of public interest, alternatively to matters of political importance, alternatively to the fitness of a public official for public office, alternatively to the fitness of a politician for public office, in circumstances where that plaintiff does not allege and prove the falsity of the statement in question. As demonstrated above there are serious and weighty issues surrounding your clients' establishment of a Trust run by a clique of Afrikaners and shielded from the NWU's control. The very issue of Dr Ellof and other Trustees' misdeeds in a public university place them squarely in the position of public figures. The flagrant breach of the PFMA in Dabiko Consulting (Pty) Ltd's case and other criminal activities have been reported to the police. As you know your clients have no right not to be named as criminal suspects.

Generally to classify a person as a public figure, the person must have achieved such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. Someone who voluntarily seeks to influence resolution of public issues may also be considered a public figure in this context. The NWHET issue was handled by a secretive clique of Afrikaners and shows how they sought to influence the resolution of the transformation issues in a manner that favours Afrikaner domination. They used NWU funds to create an entity that the incoming black Vice-Chancellor could not control. They have voluntarily injected themselves into the transformation controversy. Dabiko Consulting (Pty) Ltd is also a public figure with regard to its irregular appointment as Consultant and it actually initiated the NWHET and profited enormously from irregular use of NWU funds and as such has been drawn into a particular public controversy.

We will argue that the plaintiffs, a public university and its public officials who misuse monies, are public institutions and officials respectively for defamation purposes. See, **New York Times Co. v. Sullivan**, supra, 376 U.S. 283 n.23 ("We have no occasion here to determine how far down into the lower ranks of government employees the 'public official' designation would extend for purposes of this rule, or otherwise to specify categories of persons who would or would not be included"). All your clients are public officials for defamation purposes. See **Hutchinson v. Proxmire**, 443 U.S. 111, 119 n. 8, 99 S.Ct. 2675, 61 L.Ed.2d 411 (1979). *"[The] designation applies [however] at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs.*" **Rosenblatt v. Baer**, 383 U.S. 75, 85, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966). In deciding whether to classify the plaintiff as a public official under the New York Times rule, we must analyze the policy considerations discussed by the New York Times court. "*In determining whether a particular individual holds the status of a public official, courts have remarked on various significant considerations. The United States Supreme Court indicated that the underlying purpose of limiting an individual's ability to protect his reputation was to allow citizens to voice their opinions more freely on matters of public concern . [D]ebate on public issues should be uninhibited, robust, and wide-open, and . may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials . [T]he public official designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs . Additionally, it is important to consider whether a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and importance of all government employees . Further, it has been postulated that public figures require less protection from defamation because they tend to enjoy greater access to the media for purposes of rebutting any defamatory publication." (Citations omitted; internal quotation marks omitted.)* Id., 581.

The New York Times case clearly established the right of a publisher to comment on the acts of a public official. The court emphasized that "***the interests of the public here outweighs the interest of the ... individual ... Importance to the state and to society of such discussions is so vast, and the advantages derived are so great, that they more than counterbalance the inconvenience of private persons whose conduct may be involved, and occasional injury to reputation of individuals must yield to the public welfare, although at times such injury may be great. The public benefit from publicity is so great, and the chance of injury to private character so small, that such discussion must be privileged****."* The Supreme Court concluded that *"the constitutional guarantees require ... a federal rule that prohibits a public official from recovering damages for a … defamatory falsehood relating to his official conduct unless he proves that the statement was made with `actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or no*t."

Dr Eloff and your other clients's public comments and actions clearly related to their official conduct. The New York Times case stated, unequivocally, that "[t]he [federal constitution] . .. prohibits a public official from recovering damages for a defamatory falsehood *relating to his official conduct unless he proves that the statement was made with 'actual malice'*[1] . (Emphasis added.) **New York Times Co. v. Sullivan**, supra, 376 U.S. 279. That same year, the court elaborated on the "official conduct" portion of the New York Times rule.

See **Garrison v. Louisiana**, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964), overruled on other grounds, **Curtis Publishing Co. v. Butts**, 388 U.S. 130, 134, 18 L.Ed.2d 1094, 87 S.Ct. 1975 (1967). In that case, the court reversed a conviction for criminal libel of an appellant District Attorney who, following a dispute with eight judges, held a press conference at which he issued a statement disparaging their judicial conduct. He accused the judges of being inefficient, taking excessive vacations, opposing official investigations of vice, and for being subject to "racketeer influences." **Garrison v. Louisiana**, supra, 379 U.S. 65-66.

The Louisiana Supreme Court, in affirming the verdict, held that these statements were "*not criticisms of . the manner in which any one of the eight judges conducted his court when in session. The expressions charged contain personal attacks upon the integrity and honesty of the eight judges* . " Id., 76, quoting Louisiana v. Garrison, 154 So.2d 400 (La.1963). The U.S. Supreme Court reversed, however, holding: "***Of course, any criticism of the manner in which a public official performs his duties will tend to affect his private, as well as his public, reputation. The New York Times rule is not rendered inapplicable merely because an official's private reputation, as well as his public reputation, is harmed. The public-official rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant. Few personal attributes are more germane to fitness [to be a judge] than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character.***" (Emphasis added.) Id., 77.

It is our contention that your client are public figures who courted public attention and controversy on important public interest issues such as racism, financial sustainability of traditionally black institutions, transformation etc.

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[1] "The phrase 'actual malice' is unfortunately confusing in that it has nothing to do with bad motive or ill will." **Harte-Hanks Communications, Inc. v. Connaughton,** 491 U.S. 657, 666 n.7, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989). Actual malice means that the statement was made "*with knowledge that it was false or with reckless disregard of whether it was false or not*." **New York Times v. Sullivan,** supra, 279-80. "[A]t a minimum, actual malice requires that there be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of the publication." (Internal quotation marks omitted.) **Woodcock v. Journal Publishing Co.**, 230 Conn. 525, 537 (1994), cert. denied, 513 U.S. 1149, 115 S.Ct. 1098, 130 L.Ed.2d 1066 (1995), quoting St. Amant v. Thompson, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 26 (1968). *"[R]eckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice*." St. Amant v. Thompson, supra, 731. See, **Harte-Hanks Communications, Inc. v. Connaughton**, [491 U.S. 657, 667, 109 S.Ct. 2678, 105 L.Ed.2d 562 (1989)] where the United States Supreme Court found actual malice in [a] publisher's failure to consult a key witness and in its failure to listen to a readily available tape recording of a conversation in question in order to verify an informant's 'highly improbable' charges, on which five other witnesses had cast serious doubt."

The law requires of such public figures, politicians and public officers (by virtue of their chosen professions) to be robust and thick-skinned in relation to comments made against them. It is well established in our law that public figures, including politicians, are required to withstand greater scrutiny and criticism. In **De Lange v Costa** 1989(2) SA 857 (A) at 861-862, the Court observed that: "[b]usinessmen who engage in competition (like politicians who take part in public life) expose themselves to, and must expect, a greater degree of criticism than the average private individual." Further, a public figure cannot wade into a public debate on a very emotionally charged topic and then seek to impose silence on his critics and others who wish to challenge his views or arguments. The arrogance of Dabiko Consulting (Pty) Ltd and company cannot silence public citizens on these matters.

Your clients' stance is arrogance in the extreme and based on deliberate misreading of the law. In **Argus Printing and Publishing Co Ltd v Inkatha Freedom Party** 1992(3) SA 579(A) at 588F the Court held that: "the law's reluctance to regard political utterances as defamatory no doubt stems in part from the recognition that right-thinking people are not likely to be greatly influenced in their esteem of a politician by derogatory statements made about him..." Although politicians and public figures are not expected to endure every infringement of their personality rights, they must expect to be criticized, **Crawford v Albu** 1917 AD 102 at 105, and "*they do have to be more resilient to slings and arrows than non-political, private mortals."* **Mthembi v Mahanyele** 2004 (6) SA 329 (SCA) at para 67.

None of your clients possesses a divine right to impose upon the rest of society their orthodox and myopic views on financing in higher education or transformation; they should justly expect to be criticized even harshly for their actions which prompted forensic investigations. It is also telling that the Trust was established and trustees appointed in a manner favouring Afrikaner domination or offensive to some black African people.

In **Pienaar v Argus Printing and Publishing Co Ltd 1956 (4) SA 310 (T) at 322** the Court held that:

"*I think that the Courts must not avoid the reality that in South Africa* ***political matters are usually discussed in forthright terms. Strong epithets are used and accusations come readily to the tongue.*** *I think, too, that the public and readers of newspapers that debate political matters, are aware of this. How soon the audiences of political speakers would dwindle if the speakers were to use the tones, terms and expressions that one could expect from a lecturer at a meeting of the ladies' agricultural union on the subject of pruning roses! Some support for this view is to be found in a passage in Gatley on Libel and Slander, 3rd ed. p. 468. It reads:'In cases of comment on a matter of public interest the limits of comment are very wide indeed. This is especially so in the case of public men.* ***Those who fill public positions must not be too thin-skinned in reference to comments made upon them****."*

The EU jurisprudence supports this expansive protection of freedom of speech on political subjects. The ECtHR has often stressed the fundamental status of freedom of expression. In one of its first cases, it stated: "*Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man*." **Handyside v. United Kingdom**, 7 December 1976, Application No. 5493/72, para. 49.

The ECtHR has often repeated this and similar statements since then. The ECtHR has also made it clear that the right to freedom of expression protects offensive and disturbing speech, frequently noting that the right to freedom of expression, "… i*s applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society*.'**Id**.

In Dr Eloff's case, context is important. His status as an apartheid beneficiary, his self-declared role as a champion of Afrikaners he regards as victims of unfair attacks and his idiotic utterances and other acts of wrongdoing documented in the Wessels report make comments on his actions eminently justifiable. In comparable context in the second **Oberschlick** case, the ECtHR considered that calling a politician an idiot was a legitimate response to earlier, provocative statements by that same politician. **Oberschlick v. Austria** (No. 2), 1 July 1997, Application No. 20834/92.

Similarly, in the Lingens case, the ECtHR stressed that the circumstances in which the impugned statements had been made "must not be overlooked." **Lingens v. Austria**, 8 July 1986, Application No. 9815/82, para. 43. The ECtHR attaches particular value to political debate and debate on other matters of public concern. Robust debate is part and parcel of democracy and only very limited restrictions on such statements are acceptable: "*There is little scope … for restrictions on political speech or debates on questions of public interest."****Dichand and others v. Austria****, 26 February 2002, Application No. 29271/95, para. 38.* The ECtHR has clarified that this enhanced protection applies even where the person who is attacked is not a '**public figure;**' it is sufficient if the statement is made on a matter of public interest. See **Bladet Tromsø and Stensaas v. Norway**, 20 May 1999, Application No. 21980/93.

In conclusion, I wish to remind you of the observations made by the SCA ***S v Shaik and Others*** (Criminal Appeal) (62/06) [2006] ZASCA 105; [2006] SCA 134(1) (RSA) ; [2007] . The SCA summed up Squires J's views and its views of the insidious nature of corruption as follows:

"Squires J considered corruption in terms of the CA as a phenomenon that can 'truly be likened to a cancer, eating away remorselessly at the fabric of corporate probity and extending its baleful effect into all aspects of administrative functions'. He stated that this manner of corruption had to be checked and prevented from becoming systemic as the effects of systemic corruption can quite readily extend to the corrosion of any confidence in the integrity of anyone who had a public duty to discharge, leading unavoidably to a disaffected populace. The learned judge had regard to the evidence of Mr Hendrik van Vuuren of the Institute of Strategic Studies, a student and qualified observer of this phenomenon. Mr Van Vuuren testified about the effects of corruption on human rights and political processes and ultimately on democracy. The court was of the view that it was a 'pervasive and insidious evil' and that the public interest required its 'rigorous' suppression."

The HETN's vigilant and unceasing efforts to combat corruption must be seen in this light. The SCA quoted the following statement from the Constitutional Court in ***South African Association of Personal Injury Lawyers v Heath and others*** 2001 (1) BCLR 77 (CC) at 80E-F

'Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic State.'

The SCA continued (paragraph 223] to state that:

The seriousness of the offence of corruption cannot be overemphasized. It offends against the rule of law and the principles of good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe. In our view, the trial judge was correct not only in viewing the offence of corruption as serious, but also in describing it as follows:

'*It is plainly a pervasive and insidious evil, and the interests of a democratic people and their government require at least its rigorous suppression, even if total eradication is something of a dream.'* It is thus not an exaggeration to say that corruption of the kind in question eats away at the very fabric of our society and is the scourge of modern democracies.

CONCLUSION

It would be completely unethical, cowardly, irresponsible and unconscionable dereliction of duty for the HETN to withdraw its statements about criminal charges it has filed against your clients. You know the immunity rule. The rule is that no civil suit can be pursued against a person in respect of words spoken in court, even if they are untrue and malicious.

In defamation parlance, this is a category of 'absolute privilege'. It applies not only to evidence given on the stand but also to words said outside court as part of the investigation of crime (including complaints to the police) and also written words that go towards oral evidence, e.g. statements of case and witness statements. The Courts have recognised that this rule – a matter of policy intended to ensure that parties to litigation can speak freely and to avoid a multiplicity of actions. It would be incongruous to answer a defamation claim on the basis of a police complaint that is still subject to investigation or a forensic investigation that is yet to produce a report.

Yours faithfully.

Lucky Thekisho (Mr)
Board Chairperson