

MH4

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CONVERSATION 1

05/05/2008

Sam Sole // Billy Downer

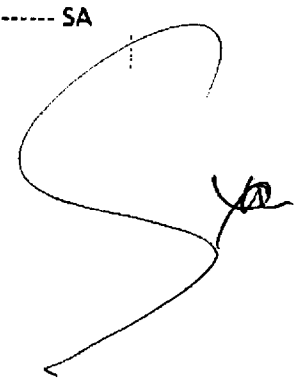
Sam Sole	Calls Downer
B:	Hello Sam.
S:	Howzit Billy, you're not in Mauritius are you?
B:	No no, Anthony is.
S:	Can you talk?
B:	I'm busy but you can talk.
S:	You heard there was supposed to be some move this week or last week on Fana the and Minister stepped in?
B:	No on Fana, maybe some truth in that. Look you reported that we go ahead with the BAE investigation that is proceeding.
S:	And the Minister's involvement somehow?
B:	I cannot disclose that.
S:	Ok, alright I'll ask Tshali
B:	Cheers.
B:	Bye

CONVERSATION 2

13/06/2008

Sam Sole // Billy Downer

B:	Hello
S:	Billy Sam, can you talk?
B:	Hello Sam. Ya sure
S:	Listen we got pretty good information that the Germans are in the process of striking a deal with Thyssen in Germany.
B:	Right.
S:	Probably next week, or within the next two weeks. But they are negotiating at the moment and then probably going to plead guilty to a tax offense and the rest will go away. I suspect that will put page ----- on his the ----- SA side.



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B:	Not necessary, depending on the info they got.
S:	Ya, Ya Sure
B:	We've written to them and told them that we know this is going on.
S:	I was just gonna say, you need to extradite.
B:	Thanks, we got that info from Richard Young as well.
S:	He got it from us.
B:	Oh did he?
S:	Not for publication.
B:	The fact they do a deal doesn't mean that they won't give us any info that we might want. They for their own purpose do whatever they do.
S:	Oh ... Ok Im trying to get some via Marcus, what is happening on their side.
B:	Would be nice if they would liase with us before they did a deal. That's Feature dusting on our DOJ.
S:	Ya, DOJ has a spanner in the works
B:	Everyone knows about MLA application they sitting on it and haven't done anything. Why has it been sent back with queries. Clearly processes triggered by application is 2 fold: (1) We help with their prosecution. (2) Inform us about crime in our country. In respect of the process DOJ has done fuck all.
S:	Stay to that effect for that effect. (unsure)

CONVERSATION 3

18/06/2008

B:	Hello
S:	Billy Sam.
B:	Morning, Afternoon.
S:	Can you talk, Did you see that how the Germans have withdrawn everything against Mr. Kupp.
B:	No, no I haven't seen.
S:	No evidence of criminology, proceeding with charges against former employees for fraud against Thyson Kupp, not connected to deal.
B:	Really?
S:	Withdrawn all request for mutual legal assistance etc.
B:	Good God. Wonder what went on there.

S:	Yah
B:	It will be no thanks to our cooperation.
B:	We carrying on, we already requested them for info, the fact that they not asking us for info does not mean that we can't ask them for info.
S:	Ok In terms of our own investigation of that deal?
B:	It's a bit irritating because all we got are the reports of what they reported to have filed. We as an investigation team have never had insight into the content of what they allegedly revealed.
S:	But I know, I don't want to get you in shit, but we know, it was confirmed by Tshall's record that a formal investigation is underway. Can we say German investigation reopened on SA side.
B:	Can't be reopened because it was never closed.
S:	Ya sure, but its been up again.
B:	BAE new investigation has to be declared New terms have to be assigned. In respect of the Germans, the terms of our 2001 declaration of investigation, include whole of it for them, not to be declared, ongoing since 2001. But you can't quote me to say that. }
S:	No, no, I'm not going to quote you at all.
B:	Say that ongoing investigation on SA side. In other words Germans may have dropped theirs but we haven't dropped ours, you can refer to the terms in the 2001 investigation, formal terms of reference included in there.
S:	I didn't know that. Listen we must sit down. Quite a lot of stuff that I can share with you. Where are you?
B:	Cape Town
S:	I am going to be in Cape Town for like a week at the end of the month. We can meet. There's quite a lot on Georgiadus that I can share with you.
B:	We can't just drop it?
S:	Is there anything that you can tell me about the Germans and the toing and frowing between Germans and Ministry in terms of what clarification was sought from the Germans?
B:	I wish I could. You know more than me, I read this in the newspaper. I'm getting out info from Ministry.
S:	Can I report that we requested info from the Germans?
B:	No, no, we haven't done anything formal.
S:	Are you getting shit from the Minister's office in terms of that investigation as well, in terms of travel and approvals for the -----?
B:	We haven't gotten that far. Open investigation. You can draw your own conclusions from the fact that we have an open investigation include-----

S:	there the Minister apparently and the DG gets an a application which falls squarely within the terms of our declared investigation and yet we don't get insight into what is contained in that request.
B:	That was never forwarded to you?
S:	Never
B:	Remember that technically speaking Its quite a long complicated process because the request for mutual legal assistance is primarily and usually aimed at exactly that. They require information from us to further their investigation. But obviously if they asking for that information it is revealed then at the same time, there are offences which have been committed in our country and they give us in their request for information that we weren't party to, because it came from them, because it was in Germany. 2 nd aim of mutual legal assistance, subsidiary aim, effect of MLA, is that if foreign country is appraised of crime committed in that foreign country.(I don't know whether the government appreciates that, is permissible and obviously a consequence of requesting MLA) unsure. You can't just say that we not satisfied with the Germans request and you know blah blah, we know that they have been crimes in their country. The mere fact that it seems that the crimes appeared in our country, what should normally happen is an internal investigation relating to crimes in our country the 2 nd process is ignored.
S:	What is the legislation in which the whole thing happened? The one with Zuma?
B:	Internal Cooperation Criminal Matters Act.
S:	
B:	Incoming requests in terms of section 7 all the DG is to do, if done in terms of section 7, is to get ministers consent, send to magistrate, all magistrate can do is issue subpoenas. In terms of that whole process the investigation been carried in SA is very limited. People have been called in front of a magistrate and been asked questions. That subsidiary process of triggering an SA investigation is done as an exchange of info between the investigation agencies.
S:	That's another thing I wanted to ask you, all the decisions, this fight with Zuma, not everything has to take place in terms of the ICCMA, there are processes and practices that can be used for the exchange of info?
B:	Yes, the incoming request from other countries, in terms of the Act are very well suited for Section 7, where the offence was committed, in that another country and where a specific type of info, a statement from a person or whatever. But it's not suited for cross boarder international crime of huge magnitude. It's not suited for another person from a country to come to us and say well listen we want a statement from that person and this person.

	There has to be a whole process. We need to do our own investigation before they tell us what they need to get from us. That preliminary process of those agencies communicating emailing, looking at documents, devising strategies and figuring out who's going to be section 204 witnesses. That process is devised from the ICCMA. You can't deal with it in terms of that act it doesn't work.
S:	ICCMA also doesn't work for search and seizure or does it?
B:	No it doesn't. There's an argument for outgoing search and seizure. Incoming search and seizure no provision for it. That was by design. Author tells you that they specifically left out search and seizure because there is provision in the criminal procedure Act for SS for a foreign country. Specially excluded because it has already been provided for. S30 of CPA --- see ss, in SA/out SA
S:	Ok. The reason why I asked that I sent them questions on the foot dragging of the BAE thing and they not replying specifically. Saying that they sure whether the correct procedures are being followed. In terms of dealing with a sovereign case. But I wanted to just check.

CONVERSATION 4

18/06/2008

B:	Hi Sam
S:	Hi, can you hear alright
B:	Sorry I am just going around this mountain.
S:	Its fine if I lose you again I'll just call back. I wanted to check, remember when we reported on the initial British request, now that was, letter of request, I understand that since then they sent more than 1 MLA, they have followed up. Is it correct?
B:	When you get an incoming request it's not always that they specify in terms of what legislation they doing it. Usually they don't, because they don't know. 1 st formal request indeed sent to authorities, who then would not --- in consultation with the British we send it directly to us, as request for parallel investigation. It was still directed to DG and the correct panel.
S:	There has been a formal request for a joint investigation?
B:	Yeah but just avoid the terms joint investigation because the ministers hated it. That implies that we let them investigate our offences.

	What you want to use is the term parallel investigation. We investigate our offenses and they investigate their offense. We in contact all the time and we look at each others' information and we share the information formally to help each other and eventually that might lead to a formal request where in terms of section 7 we'll give them our information and they'll give us their information.
S:	What role does ministers and DG play in that?
B:	Nothing they don't play any role. Except, DG having received that request formally, forwards it back to us, as the British wanted. In terms of section 7 no provision for the DG to send it to us. All they can do is send it to a magistrate. He didn't do it in terms of the act. He didn't go to minister or magistrate.
S:	How are they being obstructed then not allowing to travel?
B:	They say it is illegal.
S:	They basically say we don't think we allowed to do this.
B:	They sent sep letters. They knew that DG didn't send it to us formally.
S:	I'm sure that person got into trouble.
B:	Be careful how you word it. Avoid sources close to us. }

❖ Sam sends Billy a copy of this article before it is released for publication.

CONVERSATION 5

19/06/2008

S:	Hi Billy
B:	Hi Sam
S:	I got your message. Can I read you more or less what we got.
B:	Okay.
S:	The Justice Minister and NPA are locked in a battle on the survival of the ARMS deal investigation, Justice Minister ----- accused of obstructing the scorpions fresh investigation into commission. *article attached to this transcript*
B:	Ya
S:	There's other bits and pieces
B:	Its explosive, I don't think it is helpful. When you say Senior NPA official are going to be angry, who's that?
S:	Oh well.
B:	I don't any of those things to come from me, some of the things seems to be first hand information. It must not come from me. They will ask who's talking to M & G. }

Handwritten signature/initials

CONVERSATION 6

30/06/2008

B:	Hi
S:	Billy, Sam.
B:	Howzit?
S:	In Cape Town, you want get together and talk about the Germans?
B:	Yes, okay. Where are you now?
S:	Water Front.
B:	Come up to my office now or whenever suits you.
S:	Ya, that's a possibility. How are you placed tomorrow?
B:	Tomorrow should be fine.
S:	Will confirm.
B:	Bye.

CONVERSATION 7

30/06/2008

S:	Billy, Sam.
B:	Hi Sam.
S:	We can come now, we at the water front, where are you?
B:	At the office in town.
S:	Where about?
B:	Up from High Court. Looking at Signal Hill.
S:	Be there in 30 minutes
B:	Cheers.



CONVERSATION 8

2/07/2008

S:	Hi
B:	Hi
S:	I'm in Cape Town, can we meet in the evening?
B:	Good reason why we cannot meet. Is Nick around?
S:	Thanks
B:	Hired car in Johannesburg, M&G premises, ARMS deal documents, car removed, with documents and suitcase.



S

FROM:Hully Associates TO:0315847678 2015/02/05 16:26:08 #4097 P.010/012

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Mabandla 'blocks' arms probe

Stonewalling and technical challenges by the ministry and the Justice Department are threatening the investigation of the aircraft contract.

22 Jun 2008 00:00 [Sam Sole](#), [Stefans Brümmer](#)

The justice ministry and the National Prosecuting Authority are locked in a battle over the survival of the arms deal investigation.

Justice Minister Brigitte Mabandla is accused of blocking the Scorpions' fresh investigation into secret commission payments involving British defence company BAE Systems and Fana Hlongwane, a former special adviser to the minister of defence.

Meanwhile German prosecutors this week charged that the Justice Department's failure to assist had contributed to their dropping their own investigation into the contract by which German company ThyssenKrupp supplied the South African navy with four corvettes.

The *Mail & Guardian* has established that stonewalling and technical challenges by the ministry and the justice department are threatening the investigation of the aircraft contract awarded to the BAE Systems consortium to supply South Africa with Hawk jet trainers and Gripen fighters.

The *M&G* revealed last year that the United Kingdom's Serious Fraud Office (SFO) was investigating more than R1-billion "commissions" paid by BAE in its campaign to win the contract. These flowed among others to Hlongwane, then defence minister Joe Modise's special adviser. The Scorpions launched their own investigation in February this year.

The *M&G* has confirmed that Mabandla is refusing to authorise overseas travel by investigators to meet with the SFO, as well as to follow up leads in other countries, including a Swiss bank account allegedly linked to Hlongwane. Hlongwane has consistently declined to comment on the claims.

The ministry also appears to be challenging the legal basis for a request by the SFO that it and the Scorpions cooperate in parallel investigations of the South African deal, which would allow information sharing and coordination in a complex international probe.

Similar problems emerged with regard to a German request for South African assistance in Dusseldorf prosecutor's probe into commission payments by Thyssen to secure the South African corvette warship supply contract.

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The request, forwarded to the Justice Department last year, revealed German investigators believed the payments had flowed to South African Cabinet members and officials, including former chief of defence procurement Chippy Shaik. Shaik has consistently denied the allegation.

The German request was met with demands from the Justice Department for details and clarifications. Despite a follow-up response from the Dusseldorf prosecutors at the beginning of this year, no action has been taken to act on the request by the South Africans.

The German memorandums have also not been forwarded to the National Prosecuting Authority, even though the Scorpions have had a registered investigation of the corvette contract since 2001.

The *M&G* understands that the failure to secure any information from South Africa contributed to the decision by German prosecutors—announced this week—to close the ThyssenKrupp investigation (see story below).

In response to questions from the *M&G*, the NPA denied there had been any interference in the BAE case, but confirming “interaction” with the minister’s office regarding the investigation.

“We have a BAE investigation authorised in February 2008 in terms of Section 28 of the NPA Act. In the ordinary course of carrying out our functions, we interact with the minister’s office where we may be requested to make information available to that office in terms of Section 33 of the NPA Act.”

The section empowers the minister to request information about any investigations or prosecution decisions.

The crisis over the suspension of National Director of Public Prosecutions (NDPP) Vusi Pikoli began with similar queries about the investigation of police commissioner Jackie Selebi.

However, according to the NPA statement, “both the request for information and compliance with such request, do not constitute an interference or disruption with operational functions of the NPA including any of its units”.

Mabandla also denied any interference. In response to questions from the *M&G*, her spokesperson said: “In the normal course of his duty, the NDPP is required by the NPA Act to keep the minister informed of the activities of the NPA’s


“So the minister did not ‘intervene’; instead in this particular case the acting NDPP wrote to the minister about this matter.”

But the spokesperson confirmed Mabandla had raised queries with acting NDPP Mokotedi Mpshe and has refused to allow investigators from the Directorate of Special Operations (the Scorpions) to follow their leads overseas.

“As the [Directorate of Special Operations] DSO was interacting with a sovereign country, as the political head, the minister wanted to know what processes the DSO were following ...

“It is still not clear if the relevant laws and processes that regulate interaction with other countries were followed and it would therefore not be proper for the minister to authorise foreign trips for DSO operatives when this matter has not been clarified.”

Justice department director general Menzi Simelane confirmed that he had also written to Mpshe to query the BAE investigation, which was prompted by new evidence shared with the NPA by the SFO. “I wrote to Mpshe asking for clarity on the matter,” Simelane stated. “I hope [the *M&G*] are not suggesting that there is interference because there isn’t.”



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Similar technical constraints appear to have hampered cooperation between Scorpions investigators and their German counterparts probing the ThyssenKrupp allegations. A source with access to the NPA told the *M&G* this week that Scorpions investigators had been prevented by the Justice Department, on technical grounds, from exchanging information with the German investigators.

A well-placed, justice-sector source told the *M&G*, however, that the Scorpions have started their own probe of the ThyssenKrupp allegations, relying on an official approval in 2001 for an investigation into the corvette side of the arms deal.

Cabinet and the department in March denied that South Africa was to blame for the delays. The department said in a statement that it "has done everything possible to ensure that the government can assist the German authorities in its probe".

The German prosecutors' statement this week explaining their decision to drop the bribery aspect of the ThyssenKrupp probe, however, gave one reason as that "timely execution [of South Africa's compliance with the German request] cannot be relied on."

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