



EXHIBIT Y 16

**NTEBO JAN
MABULA**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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IN THE COMMISSION ON STATE CAPTURE
HELD IN JOHANNESBURG

BEFORE DEPUTY CHIEF JUSTICE RM ZONDO

MAJOR GENERAL NTEBO JAN MABULA

APPLICANT'S RESPONSE TO ALLEGATIONS MADE AGAINST HIM
BY MR RJ McBRIDE INCLUDING AN APPLICATION TO CROSS-EXAMINE AND
TESTIFY IN PERSON

A. INTRODUCTION

I, the undersigned,

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NTEBO JAN MABULA

do hereby make oath and state:

1.

1.1. I am a Major General in the South African Police Service (SAPS), appointed as the North West Deputy Provincial Commissioner, Crime Detection based at Wespol Square, cnr Nelson Mandela and Peter Mokaba Streets, Potchefstroom, North West Province and the facts deposed to in this affidavit fall within my personal knowledge unless otherwise indicated or as it appears from the context thereof and are to the best of my knowledge and belief, both true and correct.

1.2. I depose to this affidavit for two reasons, namely:

1.1.1 I am an implicated person having been so implicated by Mr Robert John McBride ("Mr McBride"), former Executive Director of the Independent Police Investigative Directorate ("the IPID"), in his affidavit/statement¹ before the Commission on State Capture ("the Commission") dated 13th February 2019, and I need to respond to allegations made against me; and

¹ Par 14, 50, 78 and 87 to 117 according to the Notice in terms of Rule 3.3 received from the Acting Secretary of the Commission, Mr. P Pedlar dated 8 April 2019.

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1.1.2 I also need to put my version to the Commission, be cross-examined and for my legal representatives to be afforded an opportunity to cross-examine Mr McBride.

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2.1 It is apposite that I make my submissions in the following sequence:

2.1.1 Firstly I will deal with my Background in the SAPS, my educational qualifications and the courses and places that I have been stationed at during my career as a policeman.

2.1.2 Firstly, I wish to give some background information regarding the functions of the SAPS and how it happened that I and other members under my command got involved in the investigation regarding the security threat at former Acting National Commissioner, Lieutenant General Phahlane's residence;

2.1.3 Secondly, I deal with allegations against me by Mr McBride;

2.1.4 Thirdly, I deal with grounds to cross-examine Mr McBride;

2.1.5 Fourthly, I deal with *Ad Seriatim*; and

2.1.6 Lastly, I deal with the conclusion.

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EDUCATIONAL BACKGROUND FACTS

After completing my compulsory police training, following my matriculation, I invested in my educational well-being and went on to obtain the National Diploma: Police Administration in 1996, B-Tech Degree in Policing 2011.

Since my employment at the SAPS, I have worked in most of functional, operational and managerial levels in the following:-

1984-07-04 To 1987-08-01 Charge office Commander at Delareyville SAPS:
Constable

1987-09-02 To 1993-03-22 Section Head: Delareyville Detective Branch:
Sergeant/Warrant Officer

1993-03-23 To 2000-12-30 Section Head/Deputy Detective Commander and
Acting Branch Commander in absence of the
Branch Commander at Lichtenburg detective
branch Inspection/Captain

2000-12-31 To 2001-06-01 Section Head/Deputy Detective Commander
Klerksdorp detective Branch: Superintendent

2001-06-01 To 2007-02-22 Provincial Commander Serious and Violence Crime
North West Province: Superintendent

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2007-02-22 To 2007-11-01	Provincial Commander: Organised Crime
2007-11-01 To 2010-02-28	Provincial Head Detective Service: Director
2010-03-01 To 2016-11-01	Provincial Head: Directorate for Priority Crime Investigation (HAWKS), North West
2016-11-01 To Date	Deputy Provincial Commissioner Crime Detection: North West

Since starting my employment at the SAPS, I have completed the following courses:-

1. SAPS Basic Police Training 1984
2. Crime Investigation Course 1987
3. SWAT 1994
4. Murder & Robbery Investigation 1995
5. Junior Commander Course II 1995
6. Informer Handling course 1997

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7. CRIM System course – General Inquiry Module 1997
 8. Service Excellence Through Quality Management 1998
 9. Operational Management for Officers 1998
 10. Forensic Ballistic for Investigators/firearm offences 1998
 11. Forensic biology course for crime investigators 1998
 12. Circulation system course 1998
 13. Forensic metallurgical investigation course 1998
 14. Firearm related forensic investigation course 1998
 15. Forensic course for investigators 2000
 16. Psychologically motivated crimes 2007
 17. Organised Crime course 2007
 18. Twenty second annual homicide seminar 2009
 19. During my time as the Provincial Head of the DPCI, I gained valuable

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experience and exposure via numerous international engagements in relation to transnational precious metals trafficking and money laundering investigation. Based on the specialised knowledge and skills acquired from investigations I formed part of the team that developed the value chain approach in relation to precious metals smuggling.

BACKGROUND AND INFORMATION REGARDING MY INVOLVEMENT IN INVESTIGATION REGARDING SECURITY THREAT AGAINST LIEUTENANT GENERAL PHAHLANE (“PHAHLANE”)

2.2 The South African Police Service functions in terms of the South African Police Service Act, 68 of 1995 (“the Police Act”). This act provides for a National Commissioner of SAPS, to be appointed, but there is also a Provincial Commissioner of SAPS for each of the 9 provinces, as is provided for in Section 6 of the Police Act. In terms of the Constitution as is provided for in Section 199(1) the security service of the Republic of South Africa consists of a single Defence Force, a single Police Service and any intelligence services established in terms of the Constitution. As to the Police Service it is provided for in Section 205 of the Constitution the National Police Service must be structured to function in the National, Provincial and, where appropriate, local spheres of Government (Section 205(1) of the Constitution).

2.3 In terms of Section 205(3) of the Constitution it is enacted that:

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"The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law."

Obviously such objectives also include the protection of the rights of Lieutenant General Phahlane as an inhabitant of this country and particularly to, at that stage, his personal safety as the Acting Commissioner of Police.

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During November 2016, as a result of suspicious conduct of Ms Trent and Mr O'Sullivan at the residential complex, Sable-Hill Waterfront Estate, where Lieutenant General Phahlane, the then acting National Commissioner ("Phahlane") resided, the Division : Crime Intelligence of SAPS compiled a security threat assessment pertaining to the security threat against the security of Phahlane .

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As a result of the security threat assessment the then Acting Divisional Commissioner: Crime Intelligence of SAPS, Maj Gen MG Makhele, communicated with Lieutenant General Motswenyane ("Motswenyane") in her capacity as the North West Provincial Commissioner of SAPS to provide Crime Intelligence with the capacity to investigate the security threat against Phahlane. I was nominated by Motswenyane to communicate with Crime Intelligence and was from then on the lead investigator. The investigation was then conducted under the auspices of the Acting Divisional Commissioner: Crime Intelligence Maj Gen MG Makhele. I therefore state that my appointment to lead the investigation was lawful and rational. It was brought about by

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the unlawful conduct of individuals such as O'Sullivan and Trent I will refer to hereinafter.

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The salient facts of the security threat assessment are:

- 5.1 On 9 November 2016 a Ford Kuga with registration number CK 35 XS GP attempted to access the security residential estate where Phahlane resided (Sable-Hill Waterfront Estate) through the service delivery entrance by posing as police officials.
- 5.2 The security at the estate interviewed the occupants of the vehicle and it was discovered that they were not police officials but in fact members of IPID. They declined to give reasons for their visit.
- 5.3 They requested to see the estate manager and were escorted to him and the alleged IPID members then interviewed the estate manager in the presence of the security manager and demanded copies of the building plans of the residence which belongs to Lt Gen Phahlane. It would appear that Mr Paul O' Sullivan was spearheading the investigations, notwithstanding that he was not a member of IPID. This visit by Paul O' Sullivan at Lt Gen Phahlane private residence were preceded by a number of threatening and intimidating e-mails by Mr Paul O'Sullivan to Phahlane. The e-mails at the time totalled to 49 but few will be highlighted to indicate the seriousness of the threat

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5.4 A list of threatening emails sent by O'Sullivan to Lt Gen Phahlane.

- On 12 February 2016 Phahlane received an e-mail from Paul O'Sullivan <Paul.osullivan@poaa.za.com>.

O'Sullivan stated: "dear Acting Commissioner of police this mail is between u and me. No one else knows that I sent this. Of course, if you share this with anyone else, I will share this with everyone you can think of. I'll be all over you like a bad fitting suit. If you try any dirty tricks, as your predecessors did, I'll eat you for breakfast and still be hungry afterwards. I mean that Phahalane, so don't think you are above the law. If I don't see positive action by you, before 2016-02-22, I shall start a process aimed solely at bringing you to book and will leave Moonoo alone".

- On 5 February 2016 Phahlane was copied in an e-mail from Paul O'Sullivan Paul.osullivan@poaa.za.com sent to Moonoo Vineshkumar-Lieutenant General. O'Sullivan stated: "Moonoo you are a protected crook, first by Phiyega, now it seem Phahlane..... Phahlane... If you fail to turn the tide on Moonoo and Krejcir, I will open a docket against you for defeating.. if I take Moonoo down before you I will be calling for your dismissal and imprisonment..."
- On 26 November 2016 Phahlane received an e-mail from Paul O'Sullivan Paul.osullivan@poaa.za.com O'Sullivan stated: "... this one is between you and me Phahlane. You know you are corrupt.... Soon the whole world will know... I am going to "enjoy putting you away and when I'm done with you, I'm going after your wife..."

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- On 27 November 2016 Phahlane received a mail from Paul O'Sullivan Paul.osullivan@pooaa.za.com O'Sullivan stated: "... Now as a cop, albeit a corrupt cop, I wanted some advice from you. Hypothetically, if I was to trace and kill the person that sent me the threatening message... do you think that would count as justifiable homicide..."
- On 20 November 2016 Phahlane was copied in an e-mail sent to GP: Head DPCI from Paul O'Sullivan Paul.osullivan@poaa.za.com O'Sullivan stated: "...since you got me thinking about espionage and treason, I'm finding spies everywhere, stealing state secrets...."
- On 28 February 2016 Phahlane was copied in an e-mail sent to Moonoo Vineshkumar, O'Sullivan stated: "You will not pull it off. You will fail, because I will make sure you fail. If one of your dirty cops comes anywhere near my witness, there will be blood-shed (and it won't be the witness- I have stepped the detail up to four men with automatic rifles) and, if I can prove you were behind it, things will get bad (really bad) for you.. oh, if anything happens to the witness, I will hold both you and Phahlane personally responsible..."

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At that stage it was public knowledge that an investigation was conducted against General Phahlane by the Independent Police Investigative Directorate ("IPID"). In order not to impede on the mandate of IPID I requested that specific and clear terms

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of the mandate be drafted for me in order to commence with the investigation on the alleged threat. The mandate of the investigation was then to focus only on the threat against the life of Phahlane. I was appointed as lead investigator with other members of the North West Province. I attach herewith a copy of the terms of reference marked as **Annexure "NJM1"**.

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Shortly after I received the instruction to conduct the investigation, I caused an enquiry to be registered under reference Potchefstroom enquiry number 01/12/2016. The members who formed part of the investigation team is as follows:

- 7.1 Brigadier Ncube;
- 7.2 Brigadier Kgorane;
- 7.3 Colonel Reddy; and
- 7.4 Lieutenant Colonel Dawood

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My first port of call after receiving the security threat assessment briefing, was to convene a meeting with the National Prosecuting Authorities (Director of Public Prosecutions Gauteng North (DPP)) office for the sole purpose of discussing whether the investigation relating to the threats against General Phahlane may not be construed as interference in IPID's investigation. The team met Advocate Nemoarane

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and Advocate Andrea Johnson and after relaying the facts of the earlier briefing of Crime Intelligence, they were unanimous in their decision that the investigation was lawful and we were given the green light to proceed. Brigadier Ncube and the rest of the team then proceeded with the investigations. The team met with the aforementioned advocates of the DPP on several occasions and kept them abreast of the investigations. After perusing the evidence Advocate Nemoarane and Advocate Johnson advised that a Criminal Case docket be registered. A docket was then registered under Kameeldrift CAS 12/01/2017 Impersonating an IPID official in contravention of the IPID Act and Intimidation against Paul O'Sullivan and Sarah Jane Trent. Advocate Mashuga was then appointed by Advocate Nemoarane to oversee the investigation in the offices of the DPP. It is to be noted that the team only functioned on an *ad hoc* basis and was not stationed in Pretoria or Gauteng as claimed by McBride.

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The investigation was then conducted under the auspices of the DPP's Office led by Advocate Mashuga. Later J50 warrants of arrest were issued for Sarah Jane Trent and Paul O'Sullivan. The first warrant of arrest was executed on Sarah-Jane Trent. Robert McBride and other members of IPID appeared at the High Court in Pretoria in full support of Sarah-Jane Trent, in the after hour bail application. It only dawned on me later why Robert McBride would take a special interest in Trent's arrest. The seizure of Trent's cellular phone, in terms of Section 20 Of the Criminal Procedure Act 51 of 1977 (CPA), which she locked and refused to avail the pin number, would later reveal information of sex-escapades between Robert McBride and herself over and

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above Trent’s intimate involvement in the investigation. There were several attempts by Robert McBride to retrieve the phone which included, amongst others, opening of spurious cases of theft of cell-phone and kidnapping of Trent, which needless to say was investigated by IPID. Under the guise of this false investigation IPID investigators approached Colonel Mike Sales, the analyst in SAPS to take away the phone. This prompted advocate Nemoarane to intervene and in a strongly worded letter wherein he stated that any person attempting to take the phone will be charged for defeating the ends of justice.(Letter of Advocate Nemaorane marked as **Annexure “NJM2”**. This resulted in IPID backing down. It is to be noted that a case of kidnapping was registered by Trent notwithstanding that she was arrested on a lawful warrant of arrest attached hereto marked **Annexure “NJM3”**. The two cases above are primary examples of Robert McBride launching a scathing attack on the NPA’s office for failing to prosecute members of my team. Over and above frivolous cases being opened, Robert McBride resorted to reopening cold cases and this would set the tone later for him to launch an urgent interdict to stop the team from continuing with the investigation for reason that the team were themselves a subject of investigation by IPID. The list of cases is stated below:

STATION	CASE NUMBER	CHARGE
Sandton	688/02/2017	Kidnapping
Lyttelton	309/02/2017	Defeating the end of Justice
Pretoria Central	534/5/2017	Defeating the end of Justice
Germiston	150/06/2018	Assault

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	Assault of 2006	
Hilbrow	988/06/2018 Assault of 2006	Assault
Akasia	123/6/2006	Inquest (re-opened) – Mmakau matter

On the 16 May 2017 the team and I appeared before the Portfolio Committee on Police. After a comprehensive presentation in which the facts were laid bare, no steps were taken by the Portfolio Committee on Police to stop the investigation. They appeared to be satisfied that there was no interference. After the suspension of General Phahlane on the 1st of June 2017, the team briefed Acting National Commissioner Mothiba and later National Commissioner Sitole, on the status of the investigation. It is worth mentioning that by virtue of their powers, they had the prerogative to accede to Robert McBride’s request to withdraw the investigation team but did not see the need to do so.

The team continued with investigations and J175 summonses were issued, directed to do so by Adv Mashuga for IPID investigators Mandla and Binang. At this stage Robert MacBride launched an urgent application to interdict the team from proceeding with the investigation. Although the National Commissioner Sitole filed a notice to abide, the team was granted assistance to oppose the application, by instructing Advocate Sallie Joubert S.C. of the Pretoria Bar. The matter was opposed and Judge

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Prinsloo ordered that the investigation continue under supervision and with directions from the DPP. After receiving confirmation from the DPP's office the investigation continued. See **Annexure "NJM4"** attached hereto, being an instruction from the National Director.

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After analysing Trent's cell-phone, which was sent to Israel to unlock, damning evidence against IPID members, including Robert McBride was uncovered. The evidence was presented to Advocate Mashuga who then directed that warning statements be obtained from Raphetsu and Robert McBride of IPID. A warning statement was obtained from Raphetsu and when investigators approached Robert McBride he launched a second application to the High Court to stop the investigation.

ALLEGATIONS BY McBride AGAINST THE TEAM AND MYSELF

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I will now deal with the allegations made by Mr McBride in his statement to the Commission.

12.1 McBride firstly makes an allegation that I was involved in the torturing of several suspects, including police officials who were under investigation for alleged housebreaking and theft at Benoni SAPS during 2006;

12.2 Furthermore that I was involved in the death of a certain suspect arrested in the Benoni matter during 2006 at Makau police station;

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12.3 Furthermore he also makes an allegation against myself and the team that we were commissioned by Phahlane to do a counter investigation against IPID members who conducted the investigation of alleged corruption against Phahlane. According to him this would be one of the reasons for us not to be involved in the investigation, as myself and my team were subjects of an investigation by IPID

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Relating to paragraph 12.1 above, I wish to state that up until middle of 2017 I was not officially informed by either IPID or any other investigation unit that I was a suspect in a matter which was investigated against me or any member under my command involving the alleged torture or death of any person. I wish to state that although it is correct that I was overseeing the investigation of the alleged housebreaking and theft that occurred at Benoni SAPS during 2006, the investigation was conducted by then Col Kgorane. It is correct that a suspect was taken to Ga-Rankuwa hospital where he passed on and a case docket was registered and investigated by the then Independent Complaints Directorate ("ICD"), now known as IPID, under case reference number Akasia CAS 123/06/2006. During this investigation period I submitted a statement confirming that I was the overall commander of the team. What Mr McBride omits to inform the Commission of is that after the investigation was concluded by the ICD the matter was referred to the DPP's office, Gauteng Division, Pretoria for a decision and that it was then decided that an inquest should be held at the Pretoria North Magistrate Court regarding the passing of the said person. This was done and no person was found to be responsible for the said person's death by the presiding Magistrate.

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It was only on the 12th December 2017 approximately one year after being involved as investigator in the Kameeldrift matter that I was informed that the Akasia matter was re-opened for investigation by IPID and that I had to submit a warning statement. Again here McBride omitted to inform the Honourable Chairperson of the Commission that the case docket was then referred to the DPP's office, North West Province, Advocate Johan Smit, who also decided that a formal inquest should be held by the Magistrate at the Brits Magistrate Court as the allegation was now made that the person passed on at Makau police station and not as previously stated in Pretoria North's magisterial district. IPID was subsequently informed and requested to collect the case docket from the office of Adv Smit and deliver it to the magistrate at Brits Magistrate's Court.

To date I have not been informed of any inquest where I need to give evidence on this matter. All these decisions were taken during the tenure of Mr McBride at IPID and he is well aware of this, yet he does not inform the Commission appropriately.

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I furthermore wish to state that the allegation that members of the team and myself were implicated in the alleged torture of police officials, suspects investigated in the Benoni SAPS housebreaking and theft matter, is not correct. McBride omitted to inform the Honourable Chairperson that the true facts regarding this matter are as follows:

- 15.1 No criminal case of any alleged torture or assault was made against any member or myself during the investigation of the said matter in 2006.

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15.2 Mr Raphesu from IPID (who is a suspect on Kameeldrift CAS 12/01/2017) in June 2017 became the complainant in the said matter and first registered the case docket at Germiston SAPS under reference number CAS 150/06/2017. Subsequently, after him realizing that this was not correct as the so-called complainants did not allege that the assault on them occurred in Germiston jurisdiction but allegedly in the Hillbrow SAPS jurisdiction that the matter was transferred to Hillbrow under reference CAS 988/06/2018. Once again it needs to be pointed out that this was done approximately 8 months after I was appointed as investigator in the Kameeldrift matter.

15.3 The case docket in question was referred to the DPP's office, Gauteng Local Division, Johannesburg without obtaining any explanation from any of the implicated members or myself involved in the so-called torture and IPID persuaded the DPP's office to institute prosecution and issue a summons against 10 members. It must be stated that only three (3) members out of the ten (10) were part of the Kameeldrift CAS 12/01/2017 investigation led by myself to be charged for alleged assault with intent to do grievous bodily harm and were to appear in the Johannesburg Regional Court on the 30th day of August 2017.

15.4 Immediately the members and myself became aware of these facts we instructed our attorneys to bring an urgent application against the DPP's office, Gauteng Local Division, Johannesburg for a declaratory order to compel the DPP to comply with the Code of Conduct for members of the National

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Prosecuting Authority ("NPA") issued under section 22(6) of the National Prosecuting Authority Act, Act 32 of 1998, published in the Government Gazette number 33907 on 29 December 2010, and the National Prosecution Policy and Directives dated 1 June 2015. The court was requested to make an order compelling the DPP Johannesburg *inter alia* to :

15.4.1 to inform the applicants in sufficient detail of the alleged charges of assault with the Intent to do Grievous Bodily Harm, which he unilaterally instituted against the applicants on 9 July 2018;

15.4.2 to afford the investigation team the opportunity to submit warning statements, alternatively representations to be submitted on their behalf, pertaining to the allegations against them, before any decision is taken to institute a criminal prosecution against them.

15.4.3 to take into consideration the explanations advanced by the applicants in their respective warning statements and/or representations with reference to the alleged charges, and to reconsider and review the premature decision to institute a criminal prosecution against the applicants, without complying with the Code of Conduct and the Prosecution Policy Directives and general procedure first;

15.5 The above mentioned application was brought under case number 188/1/2010 and was set down to be heard on 28/08/2018. That the DPP on 23/08/2018 wrote a letter to my instructing attorneys informing them that the summonses issued would be withdrawn against myself and the members and that our

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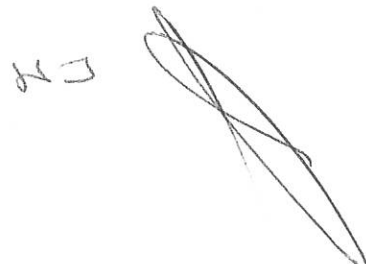
representations after disclosure of the case docket would be considered before a decision on prosecution is made.

15.6 I can confirm that my attorney's office was provided with copies of the requested case dockets where after representations was done on our behalf and submitted to the DPP's office on 21/08/2018. A copy of the letter from the DPP is attached hereto marked **Annexure "NJM5"**.

15.7 Only on Wednesday, the 15th of May 2019, did our legal representatives receive a letter from the DPP Johannesburg indicating his decision to prosecute us on the said matter. See **Annexure "NJM6"** attached. This decision will be taken on review to the NPA and if necessary to the High Court as I deem it a totally irrational decision by the DPP not informed by directives as set out in the **National Prosecuting Policy**. A copy of our representations is also attached, marked **Annexure "NJM7"**.

16

It is clear from the facts set out above in paragraphs 3 and 4 regarding my appointment as investigator into the security threat against Lieutenant General Phahlane that the allegation of McBride is unfounded and without any substance in alleging that the team and myself were commissioned by Lieutenant General Phahlane to do a counter investigation. Phahlane had nothing to do with my appointment and I was appointed by the officials as per paragraph 4 above.

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On the allegation of Assault GBH of 2011/2012 Kanana CAS 188/1/2010 against members in the North West firstly I wish to state I was never charged on any allegations of assault GBH during 2011/2012. After the testimony of Mr McBride I did make a follow up on the case and I summarise as follows:-

- Only one (1) member who was part of Kameeldrift CAS 12/01/2017 investigation has been re-issued with a J175 summons after he commenced with the Kameeldrift investigation being Col. Dawood. No other member of my team was ever charged.
- Initially during the appearance of members in 2010/2011 this case was remanded on several occasions.
- The matter was eventually withdrawn against the members in terms of 342A of CPA of 51 of 1977.
- This was after four (4) years of the members having appeared in court after the initial arrest.
- I believe the matter is now partly heard to continue on 24 – 26 June 2019 in Klerksdorp Regional Court.

AD SERIATIM

18.

AD par 14 of McBride's statement and the transcript of 11 April 2019 – day 81 – page 69 line 17 to page 70 line 11 as well as transcript of 15 April 2019 – day 83 – page 113 line 23 to page 114 line 17

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I have already given my explanation regarding this allegations in paragraph 22 – 29 which I would submit substantiate my version that McBride's allegations against me are unfounded and without any substance. I however hereby wish to add that McBride's reference to cases dating back to 2010/2011 are not cases that was opened against myself or a team under my command, but indeed allegations which was made against Lieutenant Colonel Dawood and members who worked under his command during special operations and as correctly stated by McBride the cases were later withdrawn against those members who were charged. It has since been re-instated. I however wish to state that at the time I was instructed to lead the investigation into the security threat at Phahlane's residence, Lieutenant Colonel Dawood had no charges pending against him or any investigation pending by IPID that I and/or Lieutenant Colonel Dawood was aware of. I can however not comment if the version of McBride is correct that the withdrawal was done to centralise the cases. I would suggest that this aspect be followed up with the relevant DPP's office.

19.

**Ad par 50 of McBride's statement and transcript of 15 April 2019 – day 83 –
page 11 line 6 – 10**

I take note hereof but cannot comment on this as I have no knowledge of it.

20.

**Ad par 78 of McBride's statement and transcript of 15 April 2019 – day 83 –
page 151 line 6 – 9**

Handwritten signature and initials, possibly 'KJ', in the bottom right corner of the page.

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I take note thereof and have no knowledge regarding any such conversation between Brigadier Kgomo and the IPID members mentioned. I can only state that Brigadier Kgomo was not part of the team who investigated the security threat of Phahlane.

21.

Ad par 87 of McBride's statement

I deny this and have already explained above that O'Sullivan did not only accompany IPID but indeed pretended to be an IPID official and he was the lead interrogator, closely assisted by his personal assistant Trent.

22.

Ad par 88 - 117 of McBride's statement

I have already given my explanation from paragraph 4 above regarding these allegations. I deny having conducted a counter investigation against IPID and state that the converse is rather true namely that IPID rather conducted a counter investigation against my team and myself.

23.

With reference to pages 66 to 67 of McBride's evidence relating to a meeting that took place between Brig Kgomo, IPID investigator Mahlangu, Brig Ncube and myself, I wish to state that I was informed by Brig Kgomo that Mahlangu wanted to see me in order to provide certain information which could assist the investigation. I discussed this request with Adv Mashugu who told me to go ahead and meet with Mahlangu. The meeting took place in Potchefstroom and basically Mahlangu indicated that he wanted to become a so-called Sec 204 witness (of the CPA). I made it clear that such a

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decision can only be taken by the DPP and we will discuss it with the State Advocate. Mahlangu was supposed to contact us again but did not do so. We did not pursue the issue further.

24.

With specific reference to paragraphs 114 to 118 of McBride's statement I wish to point out that the findings of Justice Tuchten and the eventual order made is totally distorted by McBride, again indicating that he does not come to the Commission in a *bona fide* effort to assist the Commission in its eventual findings relating to possible state capture, but that he indeed abuses the opportunity to testify in front of the Commission to promote his own agenda. I attach hereto a copy of the judgment of Tuchten J as well as the order he made to which is attached the undertaking of the Deputy National Commissioner Lt-Gen Mfazi, marked as **Annexure "NJM8"**.

McBride in his statement specifically paragraph 116 thereof states that Gen Mfazi "gave a written undertaking that the members of the Mabula team would no longer be involved in any revenge investigations against members of the IPID that were investigating them". On a reading of the undertaking by Gen Mfazi it is clear that this statement of McBride was made in a clear effort to mislead the Commission as no such concession at all was made by Gen Mfazi. Although my investigation team was in fact in terms of the order removed from the investigation with immediate effect, Gen Mfazi makes it clear in his undertaking under paragraph 4 that "these undertakings are made to the court and the applicants without any concession or admission of liability."

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On a reading of the judgment of Tuchten J it becomes clear that Tuchten J in fact followed the reasoning of our counsel in that it was suggested that a similar section to that incorporated in section 25 of the IPID Act should be incorporated in the police legislation, which section the Honourable Judge quoted on page 11 of his judgment. It is to be noted that Justice Tuchten did not make any factual findings that the investigation conducted by my investigating team was unlawful. In fact the Honourable Judge at paragraph 13 says the following : *"In this regard, I must make clear that no findings of guilt or innocence are made by me. No person has been vindicated or condemned and assertions to that effect would be both premature and unfounded."*

I therefore still insist that my team and myself did not make us guilty of any improper conduct and should the factual background as I set it out above be properly taken into account, there actually existed no grounds upon which my investigation team was removed from the investigation. The concession made by Gen Mfazi to remove us from the investigation was done without canvassing our opinion on the matter.

With specific reference to section 25 of the IPID Act, I submit that on the facts as I set it out above the IPID investigators and specifically Robert McBride should in terms of the said section have withdrawn from any involvement in the investigations against Phahlane in that he clearly had a personal interest and agenda relating to the investigation against Phahlane as will be clearly demonstrated by the contents of the cell phone of Trent which was seized during her arrest and which the Commission is urged to request from the current investigating team. In view of the fact that I am not the investigator anymore in the said matter, I do not feel at liberty to deal with the

HJ



SEQ 22/2019-32

27

details alluded to and request the Commission to liaise with the current investigating officer in this regard.

CONCLUSION

25.

I submit that I have demonstrated to the Commission that what Mr McBride erroneously regards as my role in "state capture activities" is with respect totally unfounded.

26.

Mr McBride's problem amongst others is that he is aware that the investigation done by the team is not a counter investigation as alleged by him but merely an independent investigation which exposed McBride's unlawful actions in collaboration with that of Paul O'Sullivan and Trent and that he may face criminal charges regarding this. I will further submit that Mr McBride failed to uphold the independence of IPID, acted in breach of the IPID Act specifically Section 25 thereof, and the Constitution.

27.

If for whatever reason, McBride was aggrieved with the NPA's refusal to prosecute or to proceed with prosecution or to withdraw the matters against the members as mentioned in my statement above, he ought to have approached courts to have the NPA's decisions declared invalid.

42.



SEQ 22/2019-33

28

28.

McBride came to the Commission to have me vilified in the eyes of the public and the citizens of the country. The allegations that were peddled in the media by McBride ended up as a narrative that I am a torturer and murderer who also assist to conceal corrupt activities and is therefore an unethical police officer whose place is a jail cell. I wish to state that I am a law abiding citizen and have committed, aided and abetted no acts of state capture directly or indirectly in common purpose with any state official, politician or a foreign national. Relating to the matter referred to in paragraph 15 where a decision has been made to prosecute me, I am surely entitled to the presumption of innocence until the trial is finalized.

GROUND TO CROSS-EXAMINE MR McBride AND TO TESTIFY IN FRONT OF THE COMMISSION IN PERSON

29

- 29.1 I submit that I have clearly indicated in my answer to Mr McBride's allegations that Mr McBride was not candid with the Commission both in his affidavit and testimony and therefore his evidence on record cannot go unchallenged.
- 29.2 This Commission is a constitutional construct and I am entitled to be afforded sufficient opportunity in terms of the Constitution to vindicate my rights enshrined in the Bill of Rights. This will include my right to testify in person in front of the Commission in defence of *inter alia* my right to dignity.

ND



SEQ 22/2019-34

29

29.3 I have highlighted above that Mr McBride had created an impression to the Commission and the public that I was a key participant in the capturing of law enforcement agencies such as my employer, the SAPS. I verily believe that such defamatory statements cannot go unchallenged in view of the serious nature thereof and the implications it could have for the country should it be true (which is denied). I therefore request leave to put my version before the Commission in person and to be cross examined by any interested party to test the veracity thereof. I also request the opportunity for my real representatives to be allowed to cross-examine Mr McBride on the allegations made in his statement and in evidence before the Commission.

**APPLICATION FOR CONDONATION FOR THE LATE FILING OF MY RESPONSE
TO THE NOTICE IN TERMS OF RULE 3.3 OF THE COMMISSION**

I was not notified at all of the fact that I was to feature as an implicated person in the evidence of Mr McBride before he was called to testify. I was subsequently served with a Notice in terms of Rule 3.3 and was afforded the opportunity to file a response on or before the 30th of April 2019. Subsequent to this I had to seek assistance from the State Attorney in order to be afforded legal representation and such permission was only granted on the 2nd of May 2019. Subsequent to notification that I was granted leave and assistance I had a preliminary consultation with my legal representatives and arising from that had to source various documentation and verify certain detail for purposes of further consultation and preparation of my statement.

CM



SEQ 22/2019-35

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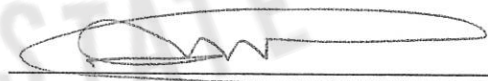
In the meantime the general elections of the Republic of South Africa which was scheduled for 8 May 2019 was looming and I received call up instructions from for deployment relating to the general elections for the period 6 May 2019 to 8 May 2019. I attach hereto as proof thereof, a copy of the Call Up Instruction, marked **Annexure "NJM9"**. Subsequent to the elections various debriefing sessions were held relating to the elections with the result that I was not in a position to properly consult with my legal representatives and to attend to this matter before Monday, the 13th of May 2019.

I submit that in the circumstances I tended to this matter with the necessary sense of urgency and request that my failure to file my response by the required date of 30 April 2019 be condoned. Such is not due to any negligence on my side or that of my legal representatives.

30.

I will elaborate if necessary when I testify. Should it become necessary, I will depose to a supplementary affidavit.

This done and signed at this day of May 2019 at ROSEBANK.

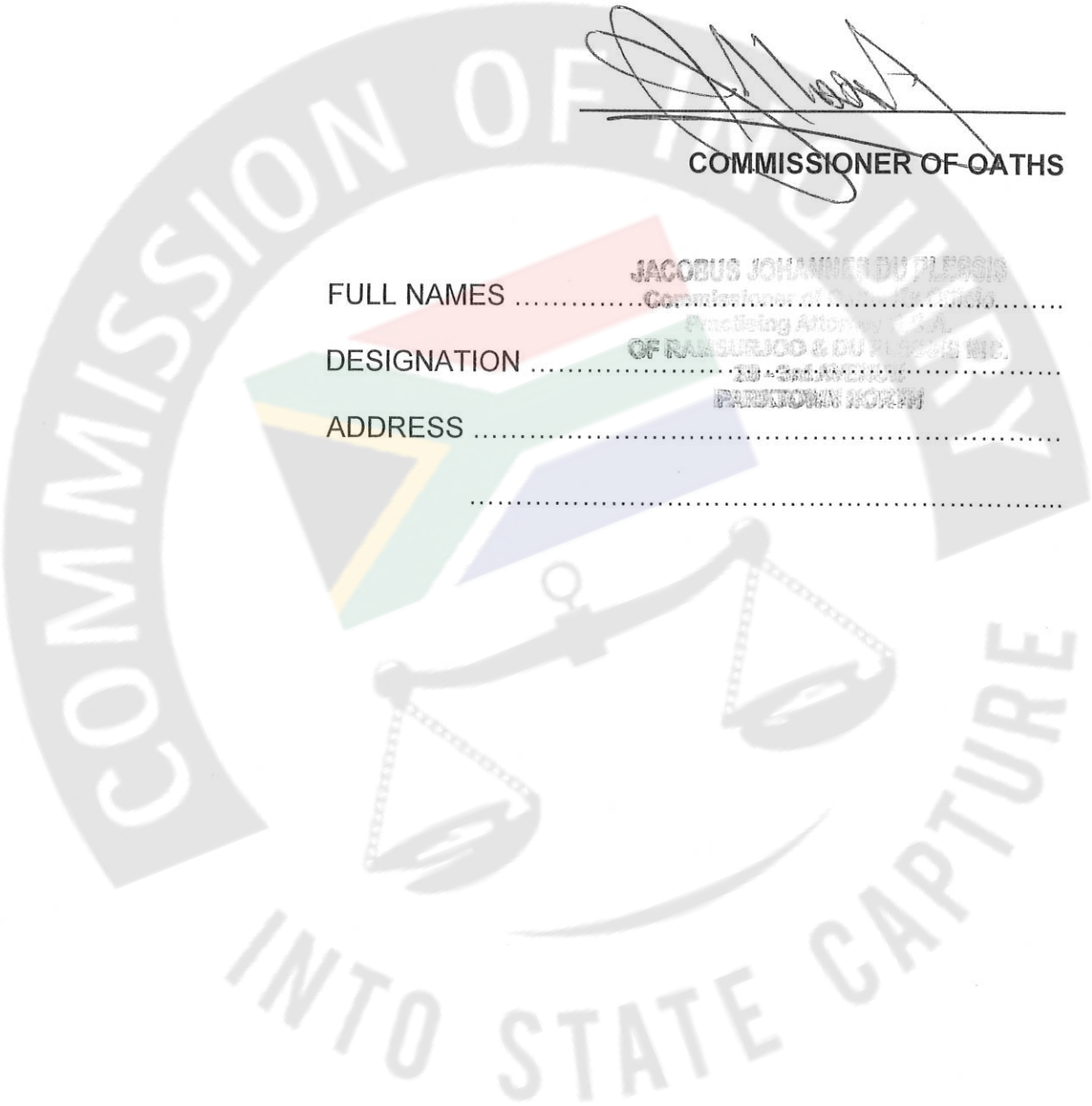


NTEBO JAN MABULA

I certify that the foregoing was signed and sworn to before me at ROSEBANK on the 17th day of MAY 2019, by the Deponent who has acknowledged that he knows and understands the contents of this affidavit and the provisions of the Regulations contained in the Government Gazette No. R1258 dated 21st July 1972 have been complied with.


COMMISSIONER OF OATHS

FULL NAMES JACOBUS JOHANNES DU FLEISSIS
..... Commissioner of Oaths
..... Practising Attorney & A.
DESIGNATION OF RANSBURGG & DU FLEISSIS INC.
..... 10 - 2nd FLOOR
..... PARKTOWN NORTH
ADDRESS
.....



"NJM1"
32
SED 22/2019-37

1. Name of the person or entity	2. Date of the incident	3. Nature of the incident	4. Date of the report

5. Name of the person or entity

6. Date of the incident 2/10/2016

7. Name of the person or entity Brig T Moyana

8. Date of the report 082 375 2515

9. Name of the person or entity
10. Date of the incident
11. Name of the person or entity
12. Date of the report

THE DEPUTY PROVINCIAL COMMISSIONER
CRIME DETECTION
SOUTH AFRICAN POLICE SERVICE
NORTH WEST

**MANDATE TO CONDUCT INVESTIGATION: SECURITY THREAT AGAINST THE
ACTING NATIONAL COMMISSIONER: COUNTER AND SECURITY INTELLIGENCE
ENQUIRY 2/10/2016.**

1. Background

On 2016/10/16 the Acting National Commissioner's private dwelling was accessed unlawfully by as yet unknown individuals, who allegedly unlawfully accessed documentation and other material which is presumed to compromise the safety of the Acting National Commissioner and his immediate family.

2. Appointment of Team to Conduct Investigation

I hereby appoint the following members to conduct the investigation and to report the findings and recommendation to my office:

- 2.1 Major General NJ Mabula
- 2.2 Brigadier CM Kgorane
- 2.3 Brigadier PD Ncube
- 2.4 Colonel SM Reddy
- 2.5 Lt. Col I Dawood

3. Objective of Investigation

The team is requested to conduct an investigation and obtain all necessary statements from witnesses and collect evidence regarding the threat against the Acting National Commissioner.

CM

SEQ 22/2019-38

33

4. Time Frame of Investigation

The investigation will commence on 2016/11/30 and will continue for a period of two (2) months, with the possibility of further extension.

5. Resource Allocation

All resources will be provided by the North West Province.

6. Accountability

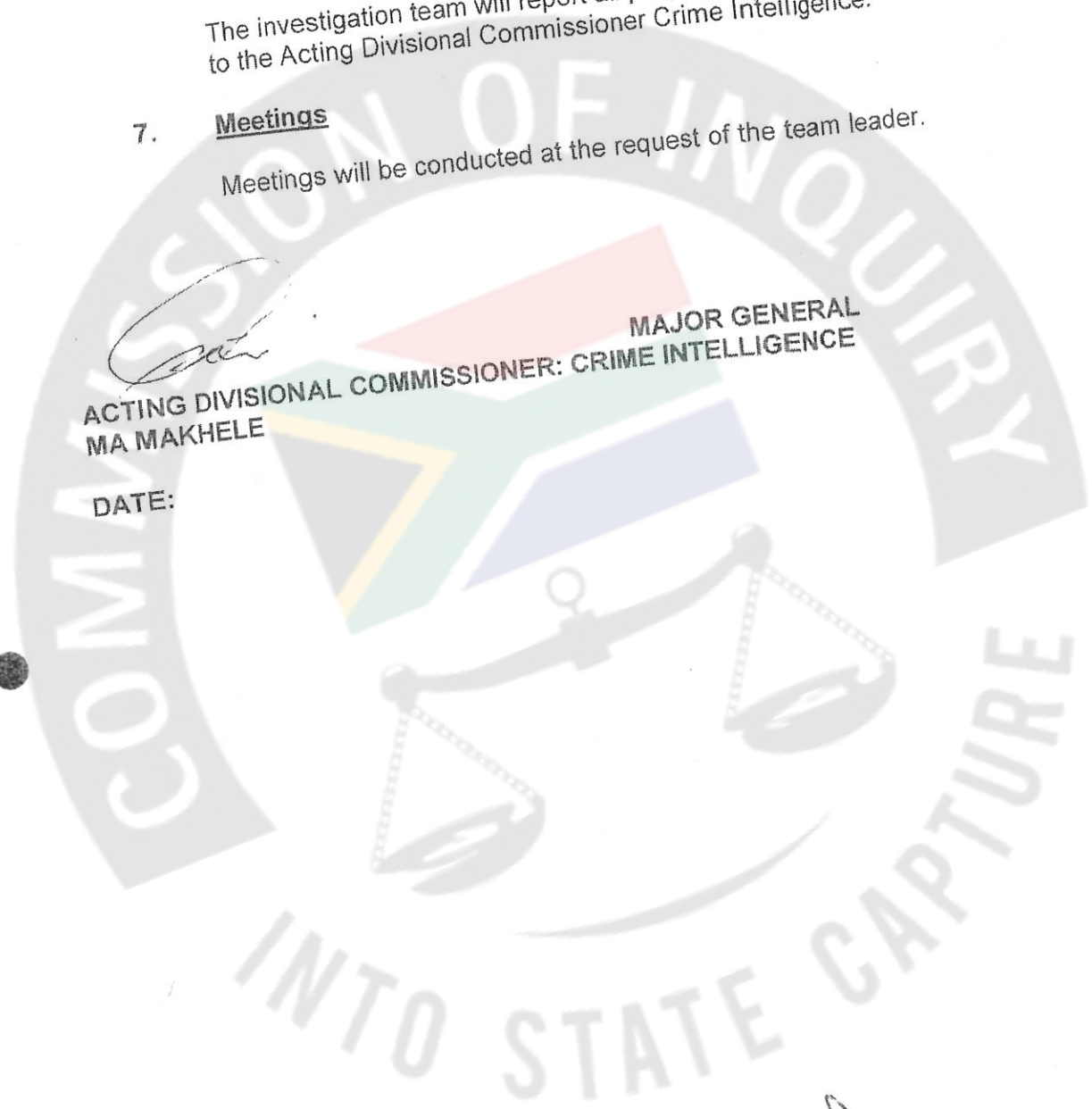
The investigation team will report all progress concerning the investigation to the Acting Divisional Commissioner Crime Intelligence.

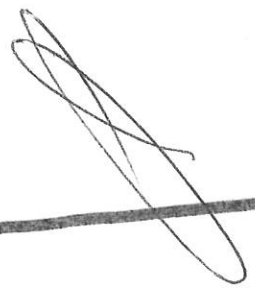
7. Meetings

Meetings will be conducted at the request of the team leader.


MAJOR GENERAL
ACTING DIVISIONAL COMMISSIONER: CRIME INTELLIGENCE
MA MAKHELE

DATE:

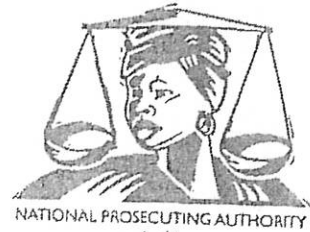



32

"NJM2"
SEQ 22/2014-39
34

National Prosecutions Service

Director of Public Prosecutions
Gauteng Division, Pretoria
(Organised Crime Component)



REF.NO. 10/3/5/2-(ORC)-01/2017

North West Provincial Head (Commercial Crime Unit)
SAPS

21 July 2017

PRETORIA

Attention Brigdier PD Ncube

Tel: +27 12 351 6700
Fax: +27 12 843 1728
dpppta@npa.gov.za

**RE: COMPLAINT AGAINST THE OFFICE OF THE DPP AND IPID MEMBERS
INTERFERING WITH EXHIBITS HANDED IN ON KAMEELDRIFT CAS:
12/01/2017**


Prudential Building
28 Church Square
PRETORIA
0002

1. The cell phone that the DPP letter seeks to obtain from the investigators forms part of court exhibits and the NPA has no right to order that such exhibits be disposed of.
2. You are not authorised to dispose court exhibits to anyone except through an order of court. That would amount to defeating the ends of justice.
3. You must give this letter to Colonel Mike Sales who must take note that he is not allowed to dispose of court exhibits unless he gets a court order directing him to do so

P/Bag X300
PRETORIA
0001
South Africa

www.npa.gov.za

Kind regards


MR V NEMAORANI
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
NORTH GAUTENG, PRETORIA

Justice in our society, so that people can live in freedom and security

Z:\Organized Crime\OC Typing\10-3-5-2-OrC-2017\10-2-3-5-2-OrC-01-2017.doc

"NJM3"
 SED 22/2019-40
 35

Kameeldrift cas 12/01/2017



REPUBLIC OF SOUTH AFRICA

Police Station	Kameeldrift	CAS No.	12/01/2017	Case No	
Name	Brigadier P D Ncube				
Address	Witpoort Square Potchefstroom				
Gender	Male	Age	54 yrs		

To *The Magistrate/Justice of the Peace, District of Cullinan

APPLICATION UNDER SECTION 43 OF ACT 51 OF 1977 FOR WARRANT OF ARREST

Application is hereby made for the issue of a warrant for the arrest of:

on a charge of Sarah Jane Trent
IPID Act 1/2011- sec 33(5) Pretend to be IPID Investigator, Fraud
 being from information taken upon oath a reasonable suspicion that *he/she committed the alleged offence on or
 between 09 November 2016 to 08 December 2016
 about the day of year in the District of

The said Sarah Jane Trent is at present known or suspected on reasonable
 grounds to be within the District of Johannesburg

*Director of Public Prosecutions/Public prosecutor/ Police officer

WARRANT OF ARREST

(To all peace officers authorised to execute warrants of arrest)

1. Whereas from written application by Brigadier P D Ncube there is a reasonable
 suspicion that Sarah Jane Trent
 of NO 19 - 18th Street - Parkhurst Johannesburg and 86
Grayston Drive (address) 309 Hydro Park Sandton
 between 09 November 2016 to 08 December 2016
 on the day of year committed the crime of
IPID Act 1/2011- Pretend to be IPID Investigator - Fraud

You are hereby directed to arrest *him/her and to bring *him/her before a lower court (viz court

Magistrate Court at Cullinan Magisterial Court)
 in accordance with the provisions of section 43 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

2. The accused must be informed that he/she has the right to consult with a legal practitioner of his/her choice, and if
 he/she cannot afford a legal practitioner, he/she may apply for legal aid at the local Legal Aid Officer.

Given under my hand at this day
 of year 2017 -02- 08

*Magistrate /Justice of the Peace

Description of accused:

White female - 32yrs - ID 8402140232083

*Delete whichever is not applicable



**OFFICE OF THE NATIONAL DIRECTOR
OF PUBLIC PROSECUTIONS**

Victoria & Griffiths Mxenge Building,
123 Westlake Avenue, Weaving Park, Silverton,
Pretoria, 0001

Private Bag X752, Pretoria, 0001

Contact number: 012 845 6758
Email: ndpp@npa.gov.za
www.npa.gov.za

18 December 2017

The Acting Director of Public Prosecutions
Private Bag X 300
PRETORIA
0001

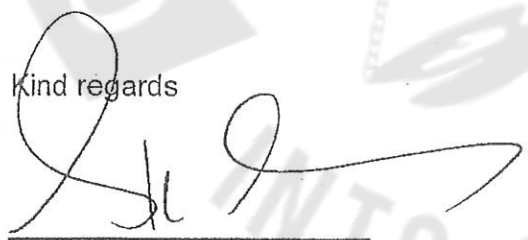
Dear Adv. Baloyi

**REQUEST FOR AUTHORIZATION TO CONDUCT OUTSTANDING
INVESTIGATION IN KAMEELDRIFT CAS 12/1/2017**

Your 10/2/12/3-NPA-37/2017 dated 15 December 2017 refer.

1. I have considered your request and perused the court order. In terms of sections 179(2) of the Constitution, Act 108 of 1996, read with section 20(1) of the National Prosecuting Authority Act, No 32 of 1998 the investigating team in Kameeldrift Cas 12/1/2017 is hereby authorized to carry all the necessary investigation in the matter, as directed in writing by the prosecutor in the case.
2. I must be apprised of developments in the investigations and the progress thereof.

Kind regards


ADV. S.K. ABRAHAMS
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

DATE: 19-12-2017

SEC 21/2019-42
NOMS
37

National Prosecutions Service
Director of Public Prosecutions
Gauteng Division, Pretoria



REF./VERW.NO. 10/2/12/3-NPA 28/17
CR 10/2/4/13/3-P14/2018
10/2/4/13/3-P19/2017
10/2/4/13/3-P25/2016

BKD Attorneys
P O Box 8013
DOCEX 243
JOHANNESBURG
2000

15 October 2018

PRETORIA

Tel: +27 12 351 6700
Fax: +27 12 843 1728
dpppta@npa.gov.za

Email: thefirm@bdk.co.za

Prudential Building
28 Church Square
PRETORIA
0002

P/Bag X300
PRETORIA
0001
South Africa

www.npa.gov.za

Gentlemen

RE : OUTSTANDING CRIMINAL CASES, OBO GENERAL JAN MABULA AND OTHERS
Your PJ DU PLESSIS/J EKSTEEN/je dated 12 September 2018

Your abovementioned letter is acknowledged.

This office confirms that the following decisions have been made in this office:

Kameeldrift CAS 123/11/2016

The matter has been finalised and a decision was made not to prosecute in the matter.

Akasia CAS 123/6/2006

The matter had been transferred to the Director of Public Prosecutions, North West. The matter has been returned to this office as it has been established that this office does in fact have jurisdiction to deal with the matter. The docket is being reviewed and a decision will be made in due course.

Lyttleton CAS 309/2/2017

The matter has been finalised and a decision was made not to prosecute in the matter.

Sandton/...

SEQ 22/2019-43

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2

Sandton CAS 688/2/2017

The National Director of Public Prosecutions has confirmed the decision not to prosecute in the said matter.

Kindly note that Germiston is within the jurisdiction of the Director of Public Prosecutions, Gauteng Division Johannesburg and can be contacted at Private Bag X8, Johannesburg or on 011 220 4000.

The case dockets referred as Pretoria Central CAS 534/5/2017, Sinoville CAS 13/6/2006 and Sinoville CAS 46/6/2006 do not appear on our database and have been requested from IPID.

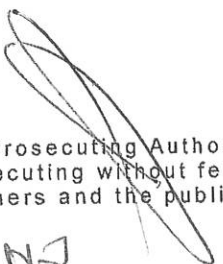
Kind regards



ADV. S MZINYATHI
DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG DIVISION, PRETORIA



Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime



SEQ 27/2019-44
NJMB

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**Director of Public Prosecutions
Gauteng Local Division**NATIONAL PROSECUTING AUTHORITY
South AfricaReference no: 10/2/4/3/3 (2017/0156)
Enquiries: Ms M Mokoena
Telephone no: 011 220 4022

Date: 15 May 2019

BDK Attorneys

e-mail: thefirm@bdk.co.za

Dear Sirs

**S v KGORANE AND OTHERS
HILLBROW CAS 988/6/2017**

1. Your representations P J du Plessis/J Eksteen/Louisa dated 21 September 2018 refers.
2. You have requested to be afforded the opportunity to either submit warning statements and/or representations relating to the intended prosecution in the abovementioned matter. While you did not provide any warning statements you indicated in your representations that your clients would plead not guilty with a complete denial of the allegations.
3. I have considered your representations and am of the view that there are prima facie cases on the charges of assault GBH against your clients.
4. I furthermore hold the view that your allegations with regard to the credibility of the complainants will have to be adjudicated in a court of law.
5. I am in no position to prescribe to IPID as to who should be investigating their matters.
6. Any perceived trial prejudice will cut both ways. You have been provided with copies of the dockets as requested.

Justice in our society, so that people can live in freedom and security

ND

**DPP Gauteng
Local Division
Regional Office**Tel: +27 11 220 4000
Fax: +27 11 220 4057ines Chambers
Cnr Pritchard &
Kruis Street
Johannesburg
2000Private Bag X8
Johannesburg
2000www.npa.gov.za

SEQ 22/2019-45

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7. In my view it is in the public interest that these serious allegations against some very senior police officers be dealt with in the Johannesburg High Court. This office is in the process to finalise the indictment.

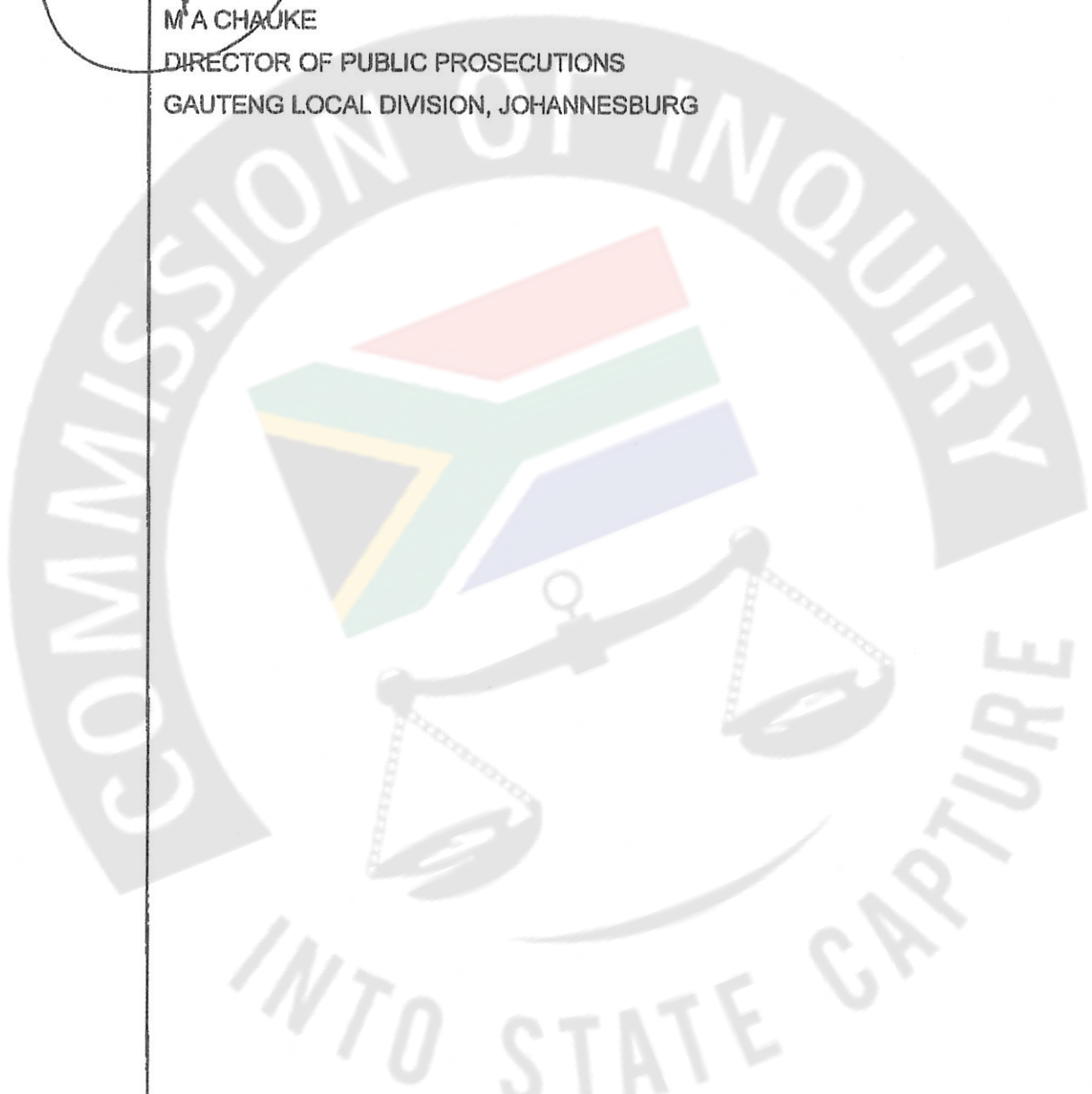
Kind Regards



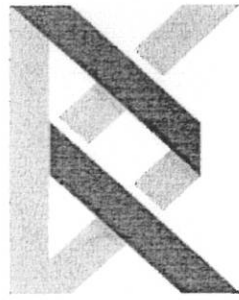
M A CHAUKE

DIRECTOR OF PUBLIC PROSECUTIONS

GAUTENG LOCAL DIVISION, JOHANNESBURG



Guided by the Constitution, we in the National Prosecuting Authority ensure justice for the victims of crime by prosecuting without fear favour or prejudice and by working with our partners and the public to solve and prevent crime



SEQ 22/2019/46
"NJM7"
41

BDK ATTORNEYS

OUR REF: P J DU PLESSIS/J Eksteen/Louisa

YOUR REF:

21 September 2018

The National Prosecuting Service
Director of Public of Prosecutions, Gauteng Local Division
Private Bag X8
Johannesburg

PER EMAIL : AChauke@npa.gov.za

FOR THE ATTENTION OF : ADVOCATE A. CHAUKE

Dear Sir,

**RE: REPRESENTATIONS TO THE DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG LOCAL DIVISION, JOHANNESBURG IN THE MATTER OF:
STATE versus CLIFFORD MATOME KGORANE AND SEVEN OTHERS
HILLBROW CAS: 988/06/2017
INVESTIGATING OFFICER Mr. M. RAPHESU (IPID)**

ESTABLISHED 1960

David H Botha, du Plessis & Kruger Inc Reg No. 93/15549/21
VAT No.: 4040180012

Directors: Pieter Jacobus du Plessis BA LLB
Rooi of Cilliers Krause Blur LLB

Consultants: Ian Christoffel Kruger BA LLB
Ian Small-Smith BProc

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www.bdk-attorneys.co.za

Ground Floor, Oxford Terrace, 3rd & 4th Street
Houghton Estate, Johannesburg

P O Box 8013, Doxex 243, Johannesburg, 2000

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SEQ 22/2019-47

**LIST AND DETAILS OF ACCUSED :**

1. **BRIGADIER CLIFFORD MATOME KGORANE**
2. **MAJOR GENERAL NTEBO JAN MABULA**
3. **LIEUTENANT-COLONEL ISMAIL DAWOOD**
4. **LIEUTENANT-COLONEL ISRAEL MDLULI**
5. **LIEUTENANT-COLONEL MOKETE MILFORD MANAMELA**
6. **CAPTAIN MFANA PATRICK MAKUTU**
7. **WARRANT OFFICER SAMUEL SENEMELA KATUMELA**
8. **WARRANT OFFICER ADAM MAOHLOLI**

ALL THE ABOVEMENTIONED REPRESENTED HEREIN BY BDK ATTORNEYS

INTRODUCTION

1. The Director of Public Prosecutions, Gauteng Local Division, Johannesburg ("DPP Jhb"), decided on the 9th day of July 2018 to institute prosecution against the eight (8) accused referred to above on two counts of Assault with Intent to do Grievous Bodily Harm ("Assault GBH"). This decision was conveyed in a letter addressed to the Independent Police Investigative Directorate ("IPID"). See attached copy of the letter, for ease of reference, marked annexure "A".
2. As a result of the said decision, the Senior Prosecutor at the Regional Court, Johannesburg Magistrates Court, on the 30th day of July 2018 issued summonses ("J175's") for the aforesaid accused to appear in the Regional Court, Johannesburg, Court 23 on the 30th day of August 2018.

H2

SEQ 22/2019-48

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3. On the 2nd day of August 2018 the attorneys for the accused, BDK Attorneys, submitted a letter to the DPP Jhb, Advocate Andrew Chauke S.C., wherein irregularities relating to the decision to institute prosecution were pointed out and the DPP Jhb was requested to provisionally withdraw the J175's issued. Furthermore it was requested that the accused be furnished with copies of the case dockets involved to afford them the opportunity to either submit warning statements and/or representations and for the DPP to then reconsider if prosecution should indeed be instituted. See attached copy of the letter, for ease of reference, marked annexure "B".
4. On the 7th day of August 2018 the DPP Jhb submitted a letter to the accused attorneys wherein it was indicated that the J175's would stay in place and that the accused needed to appear in court on the 30th day of August 2018. Furthermore that disclosure of the case dockets should be dealt with in the normal course of events once the trial-process has commenced. See attached copy of the letter, for ease of reference, marked annexure "C".
5. As a result of this decision by the DPP the accused instructed their attorneys to proceed with an urgent application to the High Court, Gauteng Local Division, Johannesburg which was issued on the 21st day of August 2018 under case number 30852/18 and the court was requested to make an order in the following terms:

HJ



SEQ 22/2019-49



5.1 that the DPP Jhb comply with the Code of Conduct for members of the National Prosecuting Authority, by being ordered to:

5.1.1 inform the accused in sufficient detail of the alleged charges on which a unilateral decision was taken to institute prosecution,

5.1.2 to afford the accused the opportunity to submit warning statements or alternatively representations, and

5.1.3 to take into consideration the accused's explanations in their warning statements or alternatively representations before the decision to prosecute was made;

5.2 ordering that copies of the contents of case dockets, being Benoni CAS 860/05/2006 and Germiston CAS 150/06/2017 now Hillbrow CAS 988/06/2017 be disclosed to the accused; and

5.3 interdicting and restraining the DPP to place or enrol the matter on the Regional Court's roll on the 30th day of August 2018.

HJ

SEQ 22/2019-50



See attached copy of the application, for ease of reference, marked annexure “D”. It is requested that the contents of the said application as far as relevant to these representations be read as repeated herein.

6. On the 23rd day of August 2018 the DPP addressed a letter to the accused’s attorneys wherein it was agreed that the J175’s would be withdrawn, copies of the requested case dockets be disclosed to the accused on the same day and that the accused would submit warning statements or representations to the DPP on or before the 21st day of September 2018 as a consequence of which the urgent application was withdrawn which was to be heard in Court on the 28th day of August 2018. See attached copy of the letter, for ease of reference, marked annexure “E”.
7. **In view of the background set out above, we hereby submit representations on behalf of all the accused for your consideration and submit that your decision should be not to institute prosecution in the said matter against any of the accused on Assault with intent to do Grievous Bodily Harm or any other alleged crime whatsoever arising from the case dockets referred to. It is to be noted that in the event the matter does proceed on trial, the plea of all the accused will be one of not guilty. All the accused deny that they or any one of them assaulted the complainants or any one of them as alleged or at all.**
8. It will be submitted that:

CN

SEQ 22/2019-51



- 8.1 on the contents of the case dockets as disclosed to the defence, no reasonable prospect of a successful prosecution exist; and further
- 8.2 in view of the particular history of the matter, including the *mala fides* IPID demonstrated in investigating the matter, the DPP Jhb should as a matter of public policy decline to prosecute; and further
- 8.3 that in any event in view of the particular history of the matter as referred to in 7.2, a prosecution at this stage, more than twelve (12) years after the event, would constitute a gross infringement on the rights to a fair and speedy trial of the accused and that as such sufficient grounds exist for a permanent stay of the prosecution. It is indeed submitted that a fair trial in this matter has become irretrievably impossible.

THE ALLEGATIONS MADE

9. It is alleged in terms of the charge sheet, annexures A and B to the J175 summonses that each of the accused:
- 9.1. is guilty of the crime of Assault with intent to do Grievous Bodily Harm, in that on or about the 29th day of May 2006 and at or near Braamfontein in the district / Regional Division of Gauteng the accused did unlawfully and intentionally assault Paul Kgoedi

ND

SEQ 22/2019-52



by electrocuting him, suffocating him with a tube which was covering his whole face and also poured water in the said tube with the intent of causing him grievous bodily harm; and

9.2. is guilty of the crime of Assault with intent to do Grievous Bodily Harm, in that on or about the 29th day of May 2006 and at or near Braamfontein in the district / Regional Division of Gauteng the accused did unlawfully and intentionally assault Serious Mthembi by electrocuting him, slapping him with open hands, kicking him, tying motor safety belt around his neck with the intent of causing him grievous bodily harm.

10. It is of high importance that it must be pointed out at this stage already, that none of the two complainants, both police officers, registered any criminal complaint against the accused during May 2006 or during any reasonable period thereafter. We will deal with the timelines below.

11. In the course of these representations we shall demonstrate that:

11.1. the complainants at no stage approached the office of IPID with any complaint or to register any complaint against the accused or to complain that any previous allegations made against the accused were not investigated. It is pointed out that although the complainants at all relevant times hereto were police officers and still are, they never had a case docket opened relating to their allegations of assault;

SEQ 22/2019-53



- 11.2. that the complaint of assault with intent to do grievous bodily harm relating to the two complainants was originally registered by one Mantsa Raphesu (“Raphesu”) a member of IPID and not the complainants themselves;
- 11.3. that the complainants were unduly influenced by IPID to at this very late stage in June 2017 lay charges against the accused;
- 11.4. that the charges against the accused were laid with *male fide* intent by IPID and that all the IPID investigators involved should on this basis alone have been disqualified to investigate the matter, including the Executive Director Mr Robert McBride and should in terms of section 25 of the Independent Police Investigative Directorate Act, Act 1 of 2011 (“IPID Act”) have withdrawn from the investigation; and
- 11.5. that before any decision is made herein the investigating team of IPID should be replaced with an objective and impartial team and the manner in which the Raphesu investigation came about and was conducted should be investigated before a rational decision can be made by the DPP Johannesburg;
- 11.6. that due to the unreasonable delay of the complainants laying the charge only eleven (11) years after the event, the accused will not have a fair trial and will be severely prejudiced for the reasons addressed hereinafter;

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11.7. Relating to the factual averments by the complainants it should be kept in mind that they were as police officers, in custody on serious charges. They had a motive to falsely implicate the investigation team in an assault on them in an effort to discredit the investigation and escape from the consequences, in the case of Kgoedi, of a confession made in his own handwriting. On a proper reading of the disclosed evidentiary material serious contradictory issues will be pointed out in the evidence of the potential state witnesses, including the complainants, which nullifies the high water mark of the State's case namely that certain injuries were found on the complainants. However, on a proper study and interpretation of these injuries they were superficial and could have been self-inflicted by the complainants, experienced police officers who knew they were in trouble and would go to any extent to escape conviction and imprisonment.

The submission is made that purely on the factual averments as contained in the case docket no reasonable prospect of a successful prosecution exist, as will be demonstrated below.

THE FACTS OF THE MATTER

12. It is of importance to point out that the original complaint of assault with intent to do grievous bodily harm, wherein the aforesaid complainants are now indicated as the complainants, was

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only registered on the 8th day of June 2017 by Mantse Raphesu (“Raphesu”) and not the complainants themselves.

13. The matter was at first registered by Raphesu at the Germiston SAPS under reference CAS 150/06/2017 and at a later stage transferred by Raphesu to Hillbrow SAPS under reference CAS 988/06/2017. No explanation is given for this and we submit that this was done as IPID, specifically Raphesu at the time of registering the case and making his statement “A1” totally misdirected himself as he had no authorisation to open the docket and as he followed own direction for unlawful motives without authorisation of the persons now paraded as complainants. Only after he met with Paul Kgoedi as well as Serious Mthembi did he realise that the case docket was registered at the wrong police station jurisdiction. This in itself demonstrates the *male fide* intent by IPID in this matter.
14. It is furthermore of importance to point out that although Raphesu alleges in his “A1” statement in the said Hillbrow case docket that he is the investigating officer in Benoni CAS 860/05/2006, nowhere in his statement does he indicate how, when and on what basis this Benoni case docket was allocated to IPID or to him for investigation.
15. We submit that according to the IPID Act, section 28, IPID is not mandated to investigate the aforesaid matter reported under reference Benoni CAS 860/05/2006 and we submit it is very suspicious and strange that Raphesu states that he is the investigating officer. The only reason he would state that he is the investigating officer would be to justify his actions in taking over

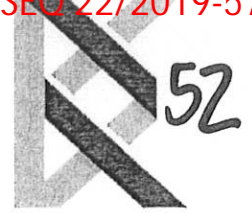
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the Benoni docket unlawfully. It is submitted that Raphesu on behalf of IPID took over the investigation in this docket with the only motive to unearth a matter/matters against the so-called North West investigative team led by Major General Mabula, (which was investigating allegations against IPID and one Paul O'Sullivan and Sarah Jane Trent) in an effort to discredit this investigating team. The motive was clearly not a *bona fide* investigation in terms of the IPID Act but instead the investigation in the Benoni CAS 860/05/2006 was unlawfully taken over and Raphesu of IPID thereupon acted as complainant in opening the Germiston CAS 150/06/2017 docket before even approaching the potential complainants. In fact, upon being approached Serious Mthembi, in terms of Raphesu's statement, indicated that he was not interested to pursue a complaint. What is also significant is that Raphesu, as (according to himself) investigating officer of Benoni CAS 860/05/2006 does not deal at all with the merits of that matter incriminating Paul Kgoedi and Serious Mthembi and does not indicate why he does not deem it appropriate to recommend that they be prosecuted on the allegations in that docket against them. We submit that the issues raised in this paragraph need to be properly investigated and considered by the DPP Jhb before a decision is made.

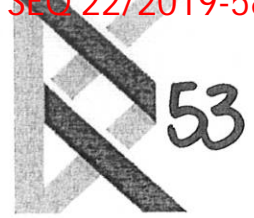
16. It is furthermore of high importance to point out that according to Section 25 of the IPID Act, no member of the Directorate, of which Raphesu is a member, may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he has a financial or any other interest which may preclude him for exercising or performing his powers, duties and functions in an objective manner.

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17. It is of importance to point out that Raphesu knew at the stage that the complaint in the Germiston CAS (now Hillbrow) was registered by him in June 2017, that he could not investigate or assist in any investigation against the accused according to the IPID Act, as he was well aware of the fact that some of the accused were involved in an investigation of allegations of corruption, fraud, extortion and pretending to be IPID members, Kameeldrift CAS 12/01/2017 refers, against him and others. Raphesu also was well aware that Mandla Mahlangu, Temane Binang, himself, Robert McBride with Paul O'Sullivan and Sarah Jane Trent were under investigation by some of the accused in this matter. In our submission this fact alone irretrievably taints the investigation against the accused with *malice* and inappropriate motives to such an extent that as a matter of public policy prosecution should not be contemplated in the name of the State.
18. In regard to the unethical conduct of IPID relating to investigations into senior police officers, it needs to be recorded that it is a publicly known fact that the Parliament of the Republic of South Africa was requested to investigate the Executive Director of IPID, Mr Robert McBride arising *inter alia* from a protected disclosure made to the Minister of Police, Mr Bheki Cele during April this year. The investigation is still pending. The disclosures made directly impacts on this matter and the motives of IPID implicating General Mabula (belatedly we will submit below) in the alleged assaults of 2006. General Mabula was leading the investigation against IPID members who allegedly perpetrated crimes in the process of investigating Lt. Genl. Phahlane, then the Acting Commissioner of the South African Police. We have

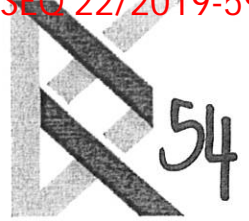
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subsequently obtained an affidavit signed by the whistle-blower, one Cedric Nkabinde, a member of IPID, repeating the protected disclosure under oath. We attach it hereto as **Annexure “F”**. From paragraph 4.22 on page 8 it is clear that the investigating officer in this case, Mantsha Raphesu is thoroughly implicated in the unethical behaviour of IPID. See also paragraph 8.9 on page 12. It is submitted that Nkabinde’s statement immediately makes clear what the motives were for Raphesu and IPID accessing the Benoni docket, even though it is not directly addressed. We submit that as elsewhere requested, an objective investigator be appointed herein to investigate the circumstances surrounding the taking over of the Benoni docket by IPID before any decision is taken herein, and that Nkabinde specifically be questioned in this regard.

19. It is further of importance to point out that Raphesu in his “A1” statement **par. 16** states that he managed to trace some of the complainants who indicated that they were scared of the police who arrested them and that if they opened cases against them, they would get killed like the other deceased suspects in the Benoni case. Furthermore that they however indicated that as and when the risks have subsided they will or might be willing to continue with the cases. Shortly afterwards the risks apparently miraculously subsided as the complainants made statements to pursue the matter! It is submitted that the allegation that these suspects in the Benoni case who are police officers (and have been at all material times) were scared to open cases of assault against the accused is just a smoke screen used by Raphesu to distract the

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attention from the fact he himself created the Germiston (later Hillbrow) case docket with ulterior motives.

20. We submit on the above that it is clearly shown that it was Raphesu and/or IPID who approached the complainants and with inappropriate motives influenced them to make statements in the matter. The complainants did not approach IPID to assist neither did they make any enquiries to IPID about registering a case against the accused. The fact that the complainants merrily plays along in these unethical games must surely cast such serious doubt on their honesty that no reasonable prospect of a successful prosecution remains.
21. It is also of importance to point out, that although Raphesu stated that the complainants would consider to continue with the cases if the risks have subsided, nowhere in any statement made by the complainants in the case docket, do they make any mention of this fact or give any explanation as to why they have not registered any criminal complaint against the accused in May 2006 or thereafter. Furthermore there is also no explanation as to what caused the change of heart relating to the “subsiding of the risk” of being killed, which motivated them to pursue the matter.
22. It is furthermore of importance to point out that the complainant Paul Kgoedi in his statement marked “A2” par. 3 states that he was arrested by Colonel Kgorane on the 29th of May 2006 at approximately 17:00 at the entrance of Daveyton although Raphesu in “A1” par. 8 states that Paul Kgoedi was arrested by Sekemela Mokolobetji Lewela (“Lewela”). This fact stated

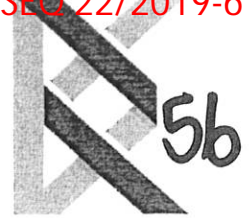
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by Raphesu is confirmed in an affidavit by Lewela in case docket Benoni CAS 860/05/2006 marked "A17". See attached copy of this affidavit, marked annexure "G".

23. We submit that it is clear from the above that Paul Kgoedi is committing perjury and was unduly influenced to implicate Colonel Kgorane, now an accused in the matter.
24. It is furthermore of high importance to point out that Paul Kgoedi in an additional statement made by him in the case docket (Germiston CAS 150/06/2017 now Hillbrow CAS 988/06/2017), marked "A13" **par. 3** states clearly that he did not see Kgorane when he was assaulted. It is therefore of great concern that the DPP, aware of this fact, still decided to prosecute Colonel Kgorane on a charge of Assault GBH of Paul Kgoedi without there being any evidence to this effect and with no evidence on which an allegation of common intent could be based.
25. It is of importance to point out that in the statement of Paul Kgoedi, marked "A2", he does not mention at any point that Major-General Jan Mabula ("Mabula") was present during any of the assaults or even that he saw Mabula at any stage. It is submitted that this statement is very detailed and it is inconceivable, if Mabula was indeed present as alleged by Serious Mthembi ("Mthembi") in his typed statement, marked "A12" **par. 3** that Paul Kgoedi does not make any reference of Mabula. The irresistible inference is that these statements were prepared in typed form by IPID and that IPID in an oversight forgot to have Mabula falsely implicated by

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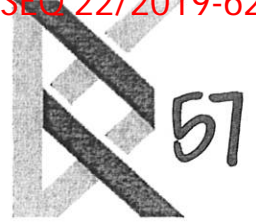


Paul Kgoedi. Kgoedi's statement that he worked under the command of General Mabula is devoid of any truth. Mabula in fact never was stationed in Gauteng.

26. It is furthermore of high importance to point out that Mthembi in this typed statement marked "A12", which was taken by Raphesu on 08/04/2018, in detail explains the presence of Mabula and how he knows Mabula (to indicate that he is not mistakenly implicating Mabula), but in the handwritten statement of Mthembi attached to "A12", taken by one Erence Motaung, of the then ICD now IPID, on 06/04/2011, nowhere does he (Mthembi) make any reference of the presence of Mabula or that he was involved in any of the investigation. We submit that this statement was also very detailed and specific. It is therefore of great concern that the DPP, aware of this fact, decided to institute prosecution against Mabula on a charge of Assault GBH of Paul Kgoedi as well as Serious Mthembi. Clearly it cannot be rationally concluded that there is a reasonable prospect of success of prosecution as far as Mabula is concerned. This very issue clearly illustrates the *mala fides* of IPID in creating the Germiston (now Hillbrow) assault docket and then, in contradiction of already existing evidence, falsely seeks to implicate Mabula, who, it is submitted, is their main target being the leader of the so-called North West team which, at the time the docket was opened and to the knowledge of Raphesu, was investigating IPID.

In this regard it is very significant to study the press release by IPID spokesperson Moses Dlamini attached hereto as Annexure "H" when the prosecution in this matter was announced on the 1st of August 2018.

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The full onslaught of the press release is against the North West Organised Crime Unit under leadership of Major General Jan Mabula who “committed the crimes in 2006”. Clearly there was no such team in existence in 2006 and furthermore the investigation was led by Brigadier Kgorane, then a colonel serving under the Provincial Commissioner Gauteng. The atmosphere sought to be created against Mabula clearly appears from the statement of Dlamini : *“It is alleged that 10 suspects, who were implicated in the R14m Benoni robbery, were arrested by Mabula and his team. Most of the suspects ended up dead or disappeared.”* Except for not being true, the question arises what the relevance of this statement by the IPID spokesperson is to the matter under discussion, leading one to the only conclusion that Dlamini of IPID acted with malice.

IPID’s motive in this prosecution clearly appears from the press statement namely to discredit General Mabula and his team to the maximum extent, even if it entails making wild and unfounded allegations.

27. We furthermore submit that the above facts pointed out regarding Mabula, clearly indicates that Mthembi is committing perjury and that he was unduly influenced by IPID to implicate Mabula. This furthermore demonstrates the *male fide* intent by IPID in this matter.
28. It is submitted that it is furthermore of concern that Kgoedi in his statement marked “A2” par. 14 states that on 30/05/2006 at approximately 09:00, he and Mthembi were detained with others at the High Risk cells at Johannesburg Central SAPS where he and Mthembi both complained to the members on duty that they were assaulted and had sustained injuries due to the assault on them by the police officer who arrested them. Allegedly as a result of this

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complaint, at approximately 13:00, he was taken to hospital where he was examined by a Dr Baloyi who according to Kgoedi did not write down his exact injuries as the doctor was informed that he is a criminal. It is of concern that none of the facts pointed out here was followed up by the investigating officer to establish if this was indeed correct. We submit that this furthermore demonstrates the *male fide* intent of IPID and their lack of interest to objectively investigate. The accused also find it of great concern that the DPP Jhb in analysing the case docket did not request that these very relevant facts, which could objectively corroborate the complainant's version (or disprove it), be followed up by the investigating officer.

29. It is also of importance to point out that the same Kgoedi in his statement "**A2**" **par. 18** states that whilst he and Mthembi were detained in C Max prison, after their detention at Marikana on 2006/06/22 and 2006/06/03, were visited by a member of ICD now IPID, one Robbie Raburabu, who informed them that they as police officers are torturing people but when the police torture them, they run to ICD. This same fact is stated by Mthembi in his typed statement "**A12**" **par. 6** and again this is not mentioned in the very detailed handwritten statement taken by Erence Motaung. This allegation was also never followed up by the investigating officer and we submit that this demonstrates furthermore the *male fide* intent of IPID in the matter. It is also of great concern that the DPP Jhb neglected/omitted to request that this highly relevant fact be followed up and investigated.

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30. It is furthermore of importance to point out that Kgoedi in his statement "**A2**" **par. 20** states that he was interrogated on 2017/03/14 by one General Meetsi of the Limpopo Crime Intelligence where he informed General Meetsi that Dawood, one of the accused in the matter (Lt-Col Ismael Dawood), tortured him. This highly relevant objective evidence is again just ignored by the investigating officer as well as the DPP Jhb and no proper investigation is done.
31. It is of high importance to point out that although Kgoedi's sister, one Nomvula Patience Kgoedi ("Patience") deposed to an affidavit, marked "**A11**" wherein she states in **par. 4 -7**, that on arrival, on 2006/05/30 at approximately 23:00, of the police with her brother, her brother was thrown to the ground in her child's bedroom where she was requested for the money, thirty thousand rand (R30 000-00) and that at the same time her brother was assaulted by the police officers present, plus minus 9 to 10 of them. She then decided to give them the money but they said that the money was not enough. She denied knowing of any other money. She also states that although she gave the money, the thirty thousand rand (R30 000-00), to the police officials she did not know the reason as to why she had to give it to them. The police officials continued to assault her brother and she then decided to go to her bedroom and get them more money. The money was counted in her presence and it amounted to seventy three thousand rand (R73 000-00). According to her version the police was still not satisfied and they asked her for Dollars and other millions. She denied having such money and they then went back to her brother, asked him for the money and then placed a plastic bag over his head, suffocating him. She was later just given a statement to sign.

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32. This version referred to in par. 30 above is totally contradicting to that of Kgoedi himself in his statement “A2” par. 15 – 17 wherein he states that he was booked out of the cells at Johannesburg SAPS at approximately 22:00 and whereafter a call was made to his sister informing her that he was arrested and needed money for bail. She, according to his version, agreed to assist in giving him the money and they then travelled to her place.
33. Kgoedi alleges that on arrival on 2006/05/31 at approximately 07:00 the police found twenty thousand rand (R 20 000-00) after they searched the house. They then took out a forensic plastic bag and suffocated him. They then forced his sister to make a statement and signed it. Nowhere in her own statement “A11” does she make any mention of these facts.
34. It is furthermore of great concern that neither the DPP Jhb after thoroughly analysing both case dockets, Germiston CAS 150/06/2017 (now Hillbrow CAS 988/06/2017) and Benoni CAS 860/05/2006, the DPP Jhb nor the investigating officer deemed it necessary to approach the officer, one D/Insp. Tlhapi (“Thlapi”) of the Serious and Violent Crime Unit (SVCU) Garankuwa, North West, who took the first statement from the sister (Patience) on 2006/05/31, to confront him with the version of Patience in her 2018/02/17 statement. This is obviously of importance as Thlapi could comment on the allegation made by Patience.
35. It is furthermore of high importance to point out that in par. 9 Patience states that the money she gave to the police was that of her husband which he got from pension after he resigned as

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a teacher as well as inherited from his mother. Also that he buys and sells vehicles and that they always kept money in the house to buy parts.

36. These highly relevant facts has not been followed up by the investigating officer, as he never made any contact with the husband of Patience to follow up whether this is correct and if he could provide the investigating officer with any objective evidence to substantiate the facts that it was his money as stated by Patience. The accused furthermore is concerned that the DPP Jhb that analysed the case dockets also did not deem it necessary that these facts must be investigated.
37. From the above it should be clear that IPID had *male fide* intent against the accused and that IPID had no interest to objectively investigate the matter but to only place evidence against the accused which favour IPID's agenda before the DPP Jhb to convince the DPP Jhb to institute a prosecution against the accused.
38. We submit that the issues pointed out above is just the tip of the iceberg and that if needed we could point out more irregularities.

Unreasonable delay of the matter

39. We furthermore submit that if it is indeed correct that both the complainants, Paul Kgoedi and Serious Mthembi, intended to complain that they were assaulted (as now alleged), they were

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at all times free to do so especially in view of the fact that they were police officers at all material times and they still are. The following is of importance:

38.1 No rational explanation exists for the failure by the complainants to take action to have their complaints registered and properly investigated. They at all times as police officials knew exactly what to do.

The only explanation for their sudden change of heart is the IPID initiative to find potential “dirt” on Major General Mabula and his team as it suited the course of IPID. This is clearly in our submission inexcusable and in flagrant disregard of the rights of the accused in terms of the Constitution.

38.2 It is to be noted that when it suited them, in an effort to escape prosecution, the complainants did not hesitate to complain to the court back in 2006 that they were assaulted as it would assist them to explain confessions made and incriminating evidence found. The question arises why did they then hesitate eleven (11) years to lay formal complaints with the SAPS and only when incited to do so by IPID.

38.3 The complainants also did not hesitate to bring, on two occasions, an application to the High Court, Gauteng Division, Pretoria for the money seized by the SAPS from them, to be returned to them, which applications both was dismissed with costs.

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This documentation is not available to the defence and could easily be sourced from the SAPS by the DPP. It may in fact reveal further important information relating to the veracity of the version of the complainants, or rather the lack thereof.

Trial Prejudice

38.4 Very real and serious trial prejudice is caused by this irrational delay of the process by the complainants in that *inter alia*:

38.4.1 More than twelve (12) years have now expired since the alleged incidents without any rational and reasonable explanation;

38.4.2 Records such as diaries relating to the roles played by the respective accused in the said investigation and their movements have been long lost or destroyed making it impossible for them to provide objective evidence in their defence which could exonerate them;

38.4.3 Naturally any persons' memory as to what exactly happened in any interaction he may have had with the complainants fade over time, making defence in this matter after twelve (12) years extremely difficult;

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38.4.4 Witnesses who may be called to refute the evidence of the complainants may prove to be deceased or untraceable. Several aspects not followed up by the IPID team has been pointed out above and it may now turn out to be impossible.

40. We furthermore wish to point out that our clients reserve their rights to approach the Court with an application for permanent stay of prosecution as set out *inter alia* in the recent reported matter of *Ashley Brooks and others v the State*, case number KS 21/2015, Northern Cape High Court, Kimberley. In par. 37 Daufe J referred to the three principles a court must consider as mentioned by Kriegler J in a unanimous judgement of the Constitutional Court in *Sanderson v Attorney General, Eastern Cape 1998 (1) SACR 227(CC)*, to wit (1) the right to a trial within a reasonable time is fundamental to the fairness of the trial and the consequent prejudice suffered by an accused if this does not materialise – see s 35(3)(d) of the Constitution; (2) the nature of the case and (3) so-called systemic delay such as effectiveness of police investigation or prosecution of the case and delays caused by congested court rolls.

41. In *Zanner v DPP, Johannesburg 2006 (2) SACR 45 (SCA)* the court accepted that compelling reasons for granting permanent stay of prosecution would normally relate to trial-related prejudice such as the unavailability of witnesses or fading memory in the conduct of his or her trial. See paragraph [12]. Here was a delay of ten years between the first and second decision to indict the appellant. Therefore, in exercising his discretion herein as to reasonable prospects

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of a successful prosecution, the DPP Jhb is to take cognisance of the fact that such decision will also have to take into consideration whether it would survive a permanent stay challenge.

42. In the circumstances it is respectfully submitted that a grave injustice occurred in the present matter, precipitated by the dishonest conduct of IPID and further exacerbated by the conduct of the investigating officer and the complainants.

CONCLUSION

43. The Prosecution Policy of the National Prosecuting Authority under “Role of Prosecutor determines that prosecution must be in the public interest (see Section 3 sub c). If the public interest demands that prosecution not be instituted, it should not even if there is a reasonable prospect of conviction (which is denied here). It is submitted that public interest (and opinion) will demand that the underhanded tactics of IPID should never be condoned and rewarded with a decision to prosecute and further public interest will demand that the roughshod trampling of the rights of the accused by the complainants (experienced police officers) in delaying their complaints for 12 years should never be condoned.
44. Furthermore we emphasize that relating to each of the accused there should be a proper scrutiny of the evidence to rationally decide whether as prosecution should follow. It was said in the well-known *dictum* in *S v Lubaxa* 2001 (2) SACR 703 SCA at paragraph 19 that:

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“The right to be discharged at that stage of the trial does not necessarily arise, in my view, from considerations relating to the burden of proof (or its concomitant, the presumption of innocence) or the right of silence or the right not to testify, but arguably from a consideration that is of more general application. Clearly a person ought not to be prosecuted in the absence of a minimum of evidence upon which he might be convicted, merely in the expectation that at some stage he might incriminate himself. That is recognised by the common law principle that there should be ‘reasonable and probable’ cause to believe that the accused is guilty of an offence before a prosecution is initiated (our underlining) [Beckenstrater v Rottcher and Theunissen 1955 (1) SA 129 AD at 135 c – e] and the constitutional protection afforded to dignity and personal freedom (S10 and S102) seems to reinforce it. It ought to follow that if a prosecution is not to be commenced without that minimum of evidence so too should it cease when the evidence finally falls below that threshold.”

45. In the circumstances it is respectfully requested that prosecution be declined against all the accused.

Yours faithfully,

BDK ATTORNEYS

DAVID H BOTHA, DU PLESSIS & KRUGER INC.

SEO 22/2019-72
"NJM8"
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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NOS: 35894/17
77549/17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

EXECUTIVE DIRECTOR, INDEPENDENT POLICE

INVESTIGATIVE DIRECTORATE,

ROBERT JOHN McBRIDE

Second Applicant

PRINCIPAL INVESTIGATING OFFICER,

MANDLAKAYISE MAHLANGU

Third Applicant

PRINCIPAL INVESTIGATING OFFICER,

TEMANE ABRAM BINANG

Fourth Applicant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
<u>26/06/18</u> DATE		<u>[Signature]</u> SIGNATURE

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE First Respondent

NORTH WEST PROVINCIAL COMMISSIONER OF
THE SA POLICE SERVICE,

LT. GENERAL BAILE BRENDA MOTSWENYANE Second Respondent

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[Signature]

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**NORTH WEST PROVINCIAL COMMISSIONER
OF THE SA POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA**

Third Respondent

**NORTH WEST PROVINCIAL HEAD -
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE**

Fourth Respondent

MINISTER OF POLICE

Fifth Respondent

**NATIONAL COMMISSIONER OF THE
SA POLICE SERVICE NO**

Sixth Respondent

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

**EXECUTIVE DIRECTOR, INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE,**

ROBERT JOHN McBRIDE

Second Applicant

**PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU**

Third Applicant

**PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG**

Fourth Applicant

**PRINCIPAL INVESTIGATING OFFICER,
MANTSHA RAPHEŠU**

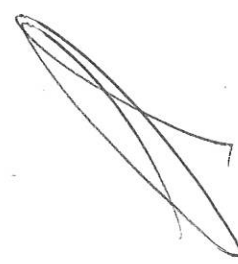
Fifth Applicant

and

**NATIONAL COMMISSIONER OF THE
SA POLICE SERVICE NO**

First Respondent

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**NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SA POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA** Second Respondent

**NORTH WEST PROVINCIAL HEAD -
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE** Third Respondent

**NORTH WEST PROVINCIAL COMMANDER
SPECIAL CRIMES UNIT
LT COLONEL ISMAIL DAWOOD** Fourth Respondent

**NORTH WEST PROVINCIAL HEAD -
ORGANISED CRIME
BRIGADIER CLIFORD MATOME KGORANE** Fifth Respondent

**NORTH WEST PROVINCIAL POLICE SERVICE
COLONEL SM REDDY** Sixth Respondent

**LT. GENERAL JOHANNES KHOMOTSO
PHAHLANE** Seventh Respondent

**NORTH WEST PROVINCIAL COMMISSIONER OF
THE SA POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE** Eighth Respondent

MINISTER OF POLICE Ninth Respondent

JUDGMENT

Tuchten J:

INTO STATE CAPTURE

Handwritten signature: *Handwritten signature*

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Page 4

- 1 This litigation concerns two organs of state, the Independent Police Investigative Directorate (IPID) and the South Africa Police Service (SAPS). IPID was established to give effect to s 206(6) of the Constitution. It must investigate complaints of misconduct or offences committed by members of SAPS.
- 2 This litigation began when IPID, its executive director and its investigators applied to this court for a declaration of rights and interdicts. While the first case was pending, the same applicants and an additional investigator brought an urgent application against a number of police officers, some of whom were respondents in the first case. The Minister of Police was cited in both applications. The citations were complicated by the replacement of General Phahlane and other officers in their official capacities by new incumbents. Where it is necessary to refer to a specific litigant party, I shall refer in this judgment and in the order I shall make to the litigants as cited in the later, urgent application. Thus, eg, General Phahlane is the seventh respondent.
- 3 National legislation was enacted to establish IPID: the Independent Police Investigative Directorate Act, 1 of 2011 (the IPID Act). Although IPID is accountable for its actions to the Minister of Police, it is an

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independent body. See *McBride v Minister of Police and Another (Helen Suzman Foundation as amicus curiae)*.¹

- 4 The first applicant was suspended from office in March 2015. He returned to office in October 2016. In early 2016, IPID initiated an investigation against the seventh respondent. The first applicant felt that little progress had been made in this investigation and appointed a new team of IPID officers, namely the second, third and fourth applicants, to investigate the complaints against the seventh respondent.
- 5 IPID initiated two criminal cases against the seventh respondent. One of them was Kameeldrift CAS 145/09/2017 (the Kameeldrift case). It concerned the construction costs to the seventh respondent's private home. It is alleged that construction costs of over R1 million were paid from the accounts of two SAPS service providers who had benefited from tenders awarded to them. As part of the investigation, IPID obtained and executed a search warrant at the seventh respondent's home.

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- 6 After the search warrant was executed, a team of members of SAPS stationed in the North West Province began an investigation into the manner in which IPID's investigation of the seventh respondent had been conducted. The SAPS team was led by General Mabula, the second respondent, and included Brigadier Ncube, Colonel Dawood, Brigadier Kgorane and Colonel Reddy: the third, fourth, fifth and sixth respondents respectively.
- 7 IPID's case is that the members of the SAPS team have conflicts of interest because each of them is the subject of an investigation into alleged criminal conduct which is being conducted by the very same IPID Investigators, ie the second to fourth respondents.
- 8 Broadly, the applicants sought a declaration as to what would constitute an impermissible conflict of interest in such circumstances, interdicts against the seventh respondent and the members of the North West SAPS Investigating team to preclude them from further participating in the investigation against the IPID members and structural interdicts, describing how any interdicts granted had been implemented.

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9 Pursuant to the urgent application, interim relief was granted by consent and without prejudice by Prinsloo J and both the urgent application and the initial application were postponed and came before me for argument on 21 June 2018.

10 Shortly before argument before me commenced on 21 June 2018, the applicants and the seventh respondent came to terms and embodied their consensus in a draft which I made an order of court. The seventh respondent undertook not to involve himself in the investigation or play any role in overseeing it. The case then continued between the other parties. The applicants were jointly represented by counsel and the remaining respondents, whom for convenience I shall henceforth call the respondents, were represented by a team of counsel.

11 At the outset, I invited argument as to the applicability of s 41 of the Constitution. Counsel satisfied me that s 41 was of no application because IPID is not an organ of state in the sphere of national government. IPID's independence takes it out of that category. Compare *Independent Electoral Commission v Langeberg Municipality*.²



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12 I regret that outcome because the relationship between IPID and SAPS has become fraught, to say the least. Accusations of serious criminal misconduct have been flung by both sides. Inevitably there will be a certain tension between these two organs but the hostility demonstrated by the papers appears to be so bad that I fear that a certain measure of dysfunctionality has intruded into the relationship between the two services. This situation manifestly requires firm and skilful managerial and political leadership but the material before me shows that this leadership has as yet not been provided. I hope that this will be remedied.

13 In this regard, I must make clear that no findings of guilt or innocence are made by me. No person has been vindicated or condemned and assertions to that effect would be both premature and unfounded. This judgment and the order that I make are designed to settle the law on a point which was in issue between those involved. The very serious allegations - on both sides - deserve to be fairly and thoroughly investigated and dealt with according to law. Until the law has spoken, nobody is entitled to cry victory.

14 During argument on s 41 and its consequences, I was handed by counsel for the applicants, without objection, a bundle of correspondence, all emanating from IPID and its lawyers and several

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addressed to the present National Commissioner and the state attorney. The bundle shows that IPID made strenuous efforts to settle the matter. I regret to say that none of these eight letters which constituted the bundle ever received a reply. It also appears that in a letter dated 23 May 2018 addressed by IPID to the present National Commissioner, IPID records that IPID understood that both the Minister and the National Commissioner agreed with IPID in principle on how the matter should be resolved.

15 But the Minister and the National Commissioner did not participate actively in these proceedings. They gave notice that they would abide the outcome of the case.

16 I was told from the bar that there is no code of conduct embodied in a standing order, set of regulations, national legislation or the like that governs in what circumstances a SAPS member will become conflicted in relation to a SAPS investigation against an IPID investigator to the extent that the SAPS member should withdraw from participation in the SAPS investigation. I think this is unfortunate and that such a code of conduct would contribute to an improved relationship between the two services. Had I the requisite jurisdiction under § 41 of the Constitution, I would given serious consideration to referring the matter back to the National Commissioner and the

WJ



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Minister under s 41(4) with the request that they, in turn, give consideration to formulating a code of conduct binding on SAPS members and, consequentially resolving the present dispute.

17 Although up to the commencement of argument, the respondents maintained that no declaration was appropriate in the present circumstances, they changed this stance during argument. The applicants too changed their stance in relation to the declaration they sought. In the result, both sides put up draft declarations which they submitted should be made orders of court. Because the parties agree that a form of declaration by the court is appropriate, I need not explain in any great detail why I, too, agree that the court should exercise its discretion by granting a declaration.

18 The applicants' proposed declaration, as finally amended by them, reads:

It is declared that it is unconstitutional for any member of the ... SAPS to undertake or oversee an investigation into a member of ... IPID where that SAPS member has a personal interest in such investigation or is himself or herself subject to an investigation by that IPID member.

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19 The respondents, on the other hand pointed to s 25 of the IPID Act, which reads, under the heading "Conflict of interest and disclosure of interest":

- (1) No member of the Directorate may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he or she has a financial or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner.
- (2) If, during an investigation, it appears to a member of the Directorate that a matter concerns a financial or other interest of that member as referred to in subsection (1), that member must-
 - (a) immediately and fully disclose the fact and nature of that interest to the Executive Director; and
 - (b) withdraw from any further involvement in that investigation.

20 This provision regulates, in the context of conflict of interest, the conduct of IPID members toward SAPS members but there is no equivalent statutory provision which regulates the conduct of SAPS members toward IPID members.

21 Accordingly, the respondents propose that I simply adopt s 25 of the IPID Act, with the necessary changes, to regulate the position which arises in this case and in future cases of alleged conflicts of interest

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where SAPS members might be required to investigate IPID members.

22 In formulating the declaration I shall issue, I bear in mind the important special position IPID and its investigators occupy in our constitutional architecture. Members of SAPS have enormous powers. They can deprive people of their liberty and intrude upon their private spaces either without prior oversight at all or where oversight is required (as in the cases of arrest or search and seizure under the authority of a warrant) necessarily without the subject of the action being heard on the question. Or members of SAPS can decline to exercise those powers. The potential for abuse is obvious. That is to my mind the primary reason why IPID exists: to investigate complaints of such abuses.

23 I bear in mind, too, that members of SAPS are constitutionally obliged to protect the independence and effectiveness of IPID. It is of the utmost importance that members of IPID, and I may say of SAPS as well, are able to carry out their duties vigorously. *Glenister v President of the Republic of South Africa and Others*.³



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24 Of special concern to IPID members, as demonstrated by the allegations in the present case, is the risk of what I might term a revenge investigation, ie the risk that a member of SAPS subject to or fearing an IPID investigation might use the powers vested in that SAPS member to conduct a counter-investigation against the very IPID member investigating or likely to investigate the SAPS member.

25 It must seldom, if ever, be necessary for a SAPS member in the position I have just described to participate in such a counter-investigation. Perhaps the participation in the investigation of such a SAPS member can be justified on the basis of very scarce skills or knowledge without which the counter-investigation cannot be conducted. In such a rare case, the SAPS member in question would have to be subject to a stricter level of oversight to ensure that the IPID investigation was not compromised.

26 I have dwelt on this hypothetical situation because it brings me to my next point, one made forcefully by the respondents. The precise delineation of the boundaries of permissible conduct by members of SAPS is preeminently a matter where policy considerations will play an important part. I was reminded by the respondents that it is not generally the province of the courts to rule on such matters. I agree. But where, as in the present case, those vested with the power to

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translate policies considered appropriate into law have failed to act, then the courts must step in. That does not mean that the courts might or should usurp the functions of other organs of state. For this reason, I shall make it clear in the order I make that my declaration is to lapse upon the coming into force of statutory rules governing the situation.

- 27 Balancing as best I am able these considerations, I prefer in principle to adapt s 25 of the IPID Act to the present situation. That formulation appears to me better to recognise the complexities that may arise from case to case and to intrude to a lesser degree on the legislative and rule making competences of other organs of state. For purposes of clarity, I shall however provide that no member of SAPS may "oversee or conduct an investigation ... In which he or she has a *personal, financial or any other interest* ..." Counsel for the respondents submitted that the text as it stood was wide enough to cover these considerations but had no objection to the inclusion of the two words I have italicized in the declaration. I shall also make other minor departures from the text of s 25 which I think will make it easier for a busy police officer to understand what he or she may or may not do.

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28 I was further told by counsel for the respondents that neither the Minister nor the National Commissioner wished to be heard on the subject and that these two office bearers continued to abide the judgment of the court and appreciated that they were bound by the declaration.

29 As to the interdicts sought by the applicants, this aspect was addressed and resolved when, following an adjournment in the course of argument sought by counsel for the respondents, the effected respondents furnished a written undertaking to the court by the Deputy National Commissioner, Lt General Mfazi, which was acceptable to the applicants. I received the undertaking, initialled it and dated it and I now mark it "Y", for purposes of identification.⁴

30 Finally, as to costs: both sets of litigants are organs of state and their funding comes from the same public purse. For this reason counsel for the respondents argued that there should be no costs order. I am persuaded however that a costs order would have a legitimate symbolic and perhaps practical effect. Although I prefer the formulation of the declaration put up by the respondents, the applicants were substantially successful and they were justified in

⁴ When I received General Mfazi's undertaking in court, I marked it "X", overlooking that I had identified the earlier undertaking of the seventh respondent in that way, I have amended my notation on the later undertaking to mark it "Y".

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bringing the applications. They are entitled to point to judicial recognition of these considerations if and when they are called upon to defend any budget proposals made by them going forward. Finally on this score, the respondents adopted positions both as to the declaration and to the interdicts which were not reasonable or justified, as demonstrated by their concessions during argument.

31 Finally, I make clear that my costs order relates only to the applicant's costs and not to those of the seventh respondent.

32 I make the following order:

1 It is declared that:

1.1 No member of the South African Police Service (SAPS) may oversee or conduct an investigation, or render assistance with an investigation, in respect of a matter concerning a member of the Independent Police Investigative Directorate in which he or she has a personal interest or a financial interest or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner.

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1.2 If, during an investigation, it appears to a member of SAPS that a matter concerns a financial or other interest of that member as referred to in paragraph 1.1 of this order above, that member must-


- (a) immediately and fully disclose the fact and nature of that interest to the National Commissioner of SAPS; and
- (b) withdraw from any further involvement in that investigation.

2 The declaration in paragraph 1 above shall remain in force until the coming into operation of any statutory rules, whether in the form of standing orders or the like or regulations having nation wide effect or national legislation, governing the subject matter in paragraph 1 above.

3 It is recorded that the written undertaking of the seventh respondent, Lt General Phahlane, given on 21 June 2018 and marked "X", attached to this order was made an order of court by consent between the applicants and the seventh respondent on 21 June 2018.

4 The undertaking of the Deputy National Commissioner, Lt General Mfazi, given on 21 June 2018, amended to be marked "Y" and attached to this order, is hereby made an order of court.

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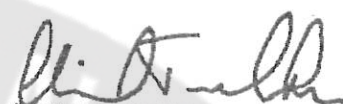


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- 5 The first to sixth and eighth respondents, as reflected in case no. 77549/17 must pay the costs of the applicants both in case no. 35894/17 and in case no. 77549/17. Such costs are to include all reserved costs and the costs consequent upon the employment of two counsel.


NB Tuchten
Judge of the High Court
26 June 2018

IpidPohlana35894.17



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SEQ 20/2019-90

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NOS.: 35894/17

77549/17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

First Applicant

EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTOR, MR ROBERT JOHN MCBRIDE

Second Applicant

PRINCIPAL INVESTIGATING OFFICER
MANDLAKAYISE MAHLANGU

Third Applicant

INVESTIGATING OFFICER TEMANE ABRAM BINANG

Fourth Applicant

and

THE ACTING NATIONAL COMMISSIONER OF
THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL PHAHLANE

First Respondent

THE NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE

Second Respondent

THE NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL MABULA

Third Respondent

THE NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER D.P. NCUBE

Fourth Respondent

MINISTER OF POLICE

Fifth Respondent

AND

Jim Shogwe

SEQ 22/2019-91

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NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE

Eighth Respondent

MINISTER OF POLICE

Ninth Respondent

DRAFT COURT ORDER

The first respondent records as follows:

1. The first respondent is a witness in the police investigation under Kameelsdrift CAS: 12/1/2017;
2. The first respondent as such deposed to an affidavit in the said Police docket under Kameelsdrift CAS: 12/1/2017, but records that he is not the complainant and neither did he open the said complaint/docket;
3. The first respondent records that at no stage did he undertake or oversee the investigation in the said matter under Kameelsdrift CAS: 12/1/2017, neither did he appoint the investigation team.
4. It is recorded that the applicants in this matter dispute the recordal of the first respondent as per points 1, 2 and 3 above.

THEREFORE in view of the aforesaid:

1. The first respondent agrees and undertakes not to at any stage up to the finalisation of the matter under Kameelsdrift CAS: 12/1/2017 in any manner involve himself in the investigation of the said matter or play any role in overseeing the investigation process.
2. The aforesaid undertakings are made to the applicants and the Court.
3. It is recorded that each party is to pay their own costs.

By order

Jm Shangwe

WJ

11/1/2019

SEQ 22/2019-92

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21/06/18

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NOS: 35894/ 17
77549/ 17

In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE First Applicant

EXECUTIVE DIRECTOR,
INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE, ROBERT JOHN MCBRIDE Second Applicant

PRINCIPAL INVESTIGATING OFFICER,
MANDLAKAYISE MAHLANGU Third Applicant

PRINCIPAL INVESTIGATING OFFICER,
TEMANE ABRAM BINANG Fourth Applicant

and

LT. GENERAL JOHANNES KHOMOTSO PHAHLANE First Respondent

THE NORTH WEST PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
LT. GENERAL BAILE BRENDA MOTSWENYANE Second Respondent

NORTH WEST DEPUTY PROVINCIAL COMMISSIONER
OF THE SOUTH AFRICAN POLICE SERVICE,
MAJOR GENERAL NTEBO JAN MABULA Third Respondent

NORTH WEST PROVINCIAL HEAD –
COMMERCIAL CRIMES INVESTIGATIONS,
BRIGADIER DANIEL PHARASA NCUBE Fourth Respondent

MINISTER OF POLICE Fifth Respondent

NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE N.O. Sixth Respondent

AND

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Jim Shogwe


SEQ 22/2019-93

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In the matter between:

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE	First Applicant
EXECUTIVE DIRECTOR, INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE, ROBERT JOHN MCBRIDE	Second Applicant
PRINCIPAL INVESTIGATING OFFICER, MANDLAKAYISE MAHLANGU	Third Applicant
PRINCIPAL INVESTIGATING OFFICER, TEMANE ABRAM BINANG	Fourth Applicant
PRINCIPAL INVESTIGATING OFFICER, MANTSHA RAPHESU	Fifth Applicant
and	
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE N.O.	First Respondent
NORTH WEST DEPUTY PROVINCIAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE, MAJOR GENERAL NTEBO JAN MABULA	Second Respondent
NORTH WEST PROVINCIAL HEAD – COMMERCIAL CRIMES INVESTIGATIONS, BRIGADIER DANIEL PHARASA NCUBE	Third Respondent
NORTH WEST PROVINCIAL COMMANDER – SPECIAL CRIMES UNIT LIEUTENANT COLONEL ISMAIL DAWOOD	Fourth Respondent
NORTH WEST PROVINCIAL HEAD – ORGANISED CRIME BRIGADIER CLIFORD MATOME KGORANE	Fifth Respondent
NORTH WEST PROVINCIAL POLICE SERVICE COLONEL S.M. REDDY	Sixth Respondent
LT. GENERAL JOHANNES KHOMOTSO PHAHLANE	Seventh Respondent
NORTH WEST PROVINCIAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE, LT. GENERAL BAILE BRENDA MOTSWENYANE	Eighth Respondent
MINISTER OF POLICE	Ninth Respondent

HJ

 J. Shogoh

DRAFT ORDER

IT IS RECORDED, BY THE UNDERTAKING OF DEPUTY NATIONAL COMMISSIONER, LT. GENERAL MFAZI, IN THE CAPACITY OF THE ACTING NATIONAL COMMISSIONER, THAT:

1. The following members of the SAPS will be removed with immediate effect from the investigation of the second to fifth applicants in Kameeldrift CAS 12/01/2017:
 - 1.1 Major General Ntebo Jan Mabula;
 - 1.2 Brigadier Daniel Pharasa Ncube;
 - 1.3 Lt. Colonel Ismail Dawood;
 - 1.4 Brigadier Clifford Matome Kgorane; and
 - 1.5 Colonel S.M. Reddy.
- 2 The National Commissioner of the SAPS shall take all necessary steps to ensure that the investigations referred to in paragraph 1 above are undertaken and overseen by SAPS members who have no financial or any other interest which might preclude them from exercising or performing their powers, duties, functions in an objective manner.
- 3 The National Commissioner of the SAPS shall file a report with this Court and the applicants by no later than 4pm on Thursday, 28 June 2018, setting out the steps taken to comply with the undertaking in paragraphs 1 and 2 above.

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Tom Skogwe

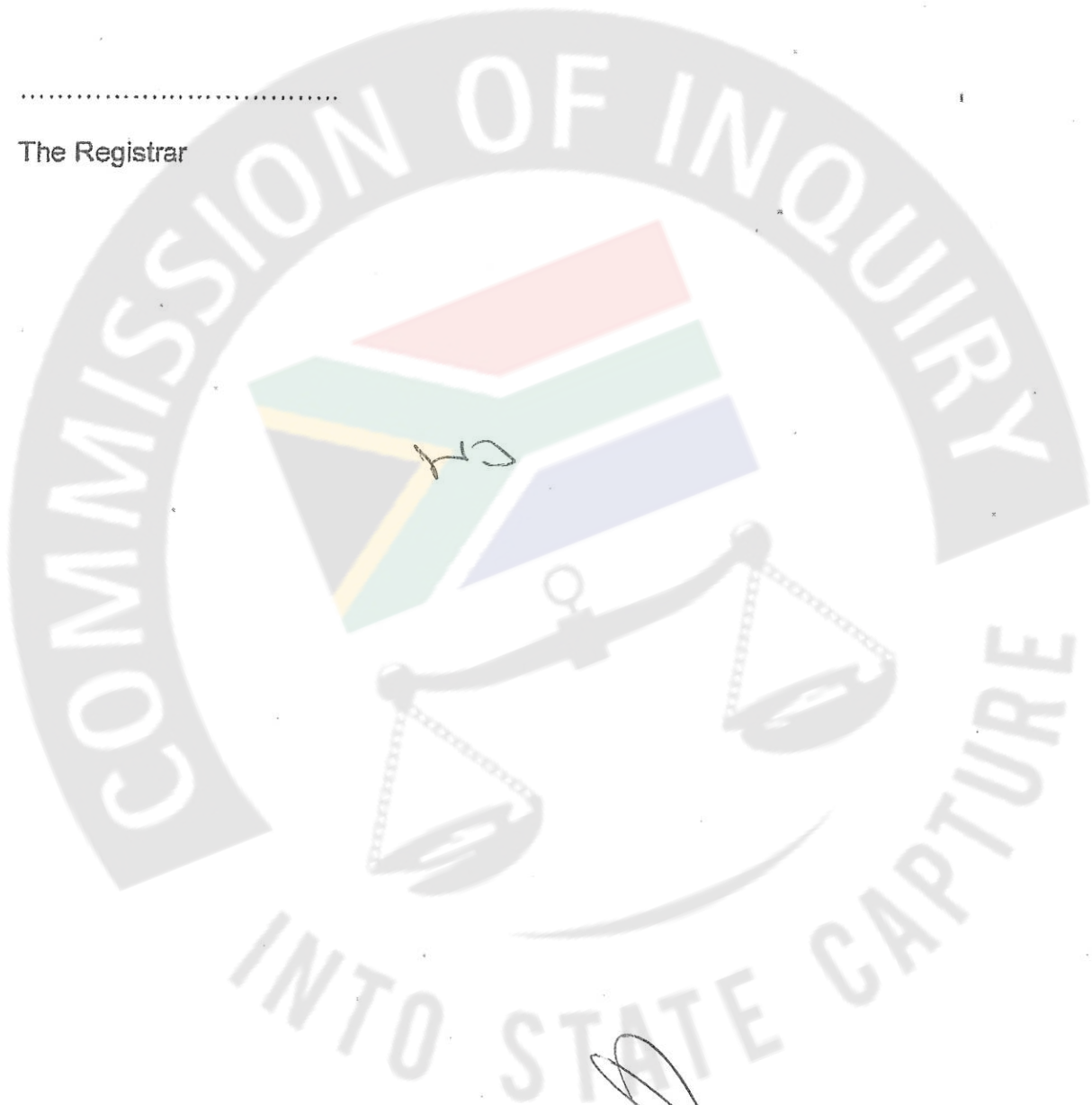
SEQ 27/2019-95

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- 4 These undertakings are made to the Court and the applicants without any concession or admission of liability.

BY ORDER OF COURT

.....
The Registrar



Tim Shongwe

"NJM9"
SEQ 22/2019-96

G.P.-S. 002-0222

SAP 21

91

SOUTH AFRICAN POLICE SERVICE**SUID AFRIKAANSE POLISIEDIENS**

PRIVATE BAG X801, POTCHEFSTROOM, 2520

Reference	3/5/2/294
Enquiries	Brig Govender
Telephone	(018) 299 7887
Fax number	(018) 299 7030
Email	govenderdk@saps.gov.za

THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
NORTH-WEST
POTCHEFSTROOM
2520

The Deputy Provincial Commissioners
Policing
Crime Detection
Management Intervention
Human Resource Management
NORTH WEST

The Provincial Heads
DPCI
Legal Services
Vispol
FCS
Crime Detection
Organised Crime
Crime Registrar
TMS
Finance
O.D
Personal Management
HRD
SCM
NORTH WEST

CALL UP INSTRUCTION: DEPLOYMENT OF SMS MEMBERS: NORTHWEST: NATIONAL AND PROVINCIAL GENERAL ELECTIONS 2019: 6 MAY 2019 TO 8 MAY 2019.

1. NATJOINTS instruction 62 of 2018: National and Provincial Election 2018 refers.
2. The five year term of the current National and Provincial legislatures matures on 6 May 2019 and the General Elections will take place on 8 May 2019.
3. The Election security will be managed through the JOINTS Structures at Provincial, Cluster and Local levels to contribute towards creating conditions for free and fair elections.
4. The following SMS officers are called up for Election Related duties on 2019-05-06 from 10:00 to 18:00 (this is based on the premise that SMS members will first report to their respective Provincial offices at 05:45).

2019-05-07 from 05:45 till 18:00

2019-05-08 from 04:30 till the counting process is finalised and the ballot boxes are delivered to the respective warehouses.

SEQ 22/2019.97

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**CALL UP INSTRUCTION: DEPLOYMENT OF SMS MEMBERS: NORTHWEST:
NATIONAL AND PROVINCIAL GENERAL ELECTIONS 2019: 6 MAY 2019 TO 8
MAY 2019**

5.

NUMBER	PERSAL	RANK	NAME	INITIALS	POSTING
1	06081401	Maj General	Mbotho	DP	PROVJOC
2	6033971	Maj General	Mabula	NJ	Rustenburg /Zeerust Cluster
3	6080049	Maj General	Molefe	DS	Pudimoe Cluster
4	5174791	Maj General	Olifant	KG	Vryburg Cluster
5	6048200	Maj General	Naidoo	GP	Mahikeng Cluster
6	4883080	Brigadier	Madoda	JD	Pudimoe Cluster
7	5433436	Brigadier	Ntshabele	JTS	Rustenburg Cluster
8	4103106	Brigadier	Swart	A	Mahikeng - Finance
9	5142695	Brigadier	Mothobi	GE	Mahikeng Cluster
10	4972996	Brigadier	Mqoni	DC	Brits Cluster
11	6067611	Brigadier	Nkabinde	DL	Klerksdorp Cluster
12	6173951	Brigadier	Masanya	MA	Zeerust Cluster
13	6367518	Brigadier	Kgorane	CM	Rustenburg Cluster
14	4287762	Brigadier	Wagner	AC	PROVJOC
15	4334221	Brigadier	Visser	V	Brits Cluster
16	6164277	Brigadier	Sibeko	PA	Mahikeng Cluster
17	6382754	Brigadier	Njikelana	T	Vryburg Cluster
18	4709888	Brigadier	Alexander	CD	Klerksdorp Cluster
19	4338511	Brigadier	Mans	A	Brits Cluster
20	4922786	Brigadier	Molate	AS	Vryburg Cluster
21	5205921	Brigadier	Ngutshani	TY	PudimoeCluster
22	04299337	Brigadier	Flynn	HF	Pudimoe Cluster

6. Attire and Operational Equipment

6.1 All members to be dressed according to the SAPS dress code and line function responsibility.

6.2 When reporting for duty members must be equipped with:

- Polmed membership card
- Identity documents
- Driver's licence
- Rain coat
- SAPS appointment certificate
- Pocket book
- Hand cuffs/ cable ties
- Official firearm
- Bullet Proof Vest with the name tag ironed on the middle of the vest
- Any other specialised equipment issued for operation purposes

7. Financial implications

7.1 Members that are entitled to claim for accommodation due to their deployment away from their

NC

SEQ 22/2019-98

after approval of an itinerary for the period deployed.

7.2 Source documents

7.1.1 The following documents will be used by financial service to process all payments relevant to the operation.

- The approved Call Up Instruction
- Approved itinerary.
- An official SAPS 15 form must be completed on a daily basis in detail by members for command and control purpose.

7.2.1 The following account must be utilized

Responsibility code: 1751

Objective code: 0132

Project code: ~~7437~~ 5657

7.2.2 All claims will be processed by the nearest accounting station. FA 1751098495

Item	Members	Days/ Nights	Tariff per person	Amount
Accommodation	23	3 Days		
	19	3 Nights	R 1000-00	R 57 000-00
Meals (non accommodated)	3	3 Days	R 236-00	R 2 124-00
Meals	28 19	4 Days	R 323-00	R 24 548-00
Allowance	28 19	4 Days	R 134-00	R 10 184-00
TOTAL COSTS				R 93 856-00

8. There are Director Generals deployed from National level as well as SMS members deployed from Head Office. Let us work jointly with them as they will be representing their departments.
9. SMS members will not take over duties from Station Commanders but and Cluster Commanders will enhance command and Control to ensure that General Election 2019 is managed efficiently.
10. Please take note of Head Office letter 14/1/4: General Elections 2019: 6 May 2019 to 8 May 2019: South African Police Service, in respect of meal allowance and Public Holiday Claims.

The Special Daily Overtime Allowance is not payable to SMS members on 6 and 7 May 2019. SMS members will only qualify for public holiday remuneration on 8 May 2019 and normal S&T allowance where applicable.

11. Your co-operation is appreciated.

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: NORTH WEST PROVINCE
BB MOTSWENYANE

Date: 2019.04.29

APPROVED / NOT APPROVED	
AUTHORITY 1751098743	DATED 29 APR 2019
ACCOUNT NR 1751	0132
PROJECT NR 5657	BR GADIER
F/PROVINCIAL COMMISSIONER: NORTH WEST PROVINCE SA POLICE SERVICE	

Exhibit Y16(b)



**ANSWERING AFFIDAVIT
OF
RJ MCBRIDE
IN RELATION TO
THE FOUNDING AFFIDAVIT
OF
NJ MABULA**

**REFER TO EXHIBIT Y15(b)
LEA-17-055 or Y15-PDN-0053**

Exhibit Y16(c)



NO REPLYING AFFIDAVIT

BY

NJ MABULA

SUBMITTED TO/OR RECEIVED BY

THE COMMISSION

IN RELATION TO

ANSWERING AFFIDAVIT

OF

RJ MCBRIDE

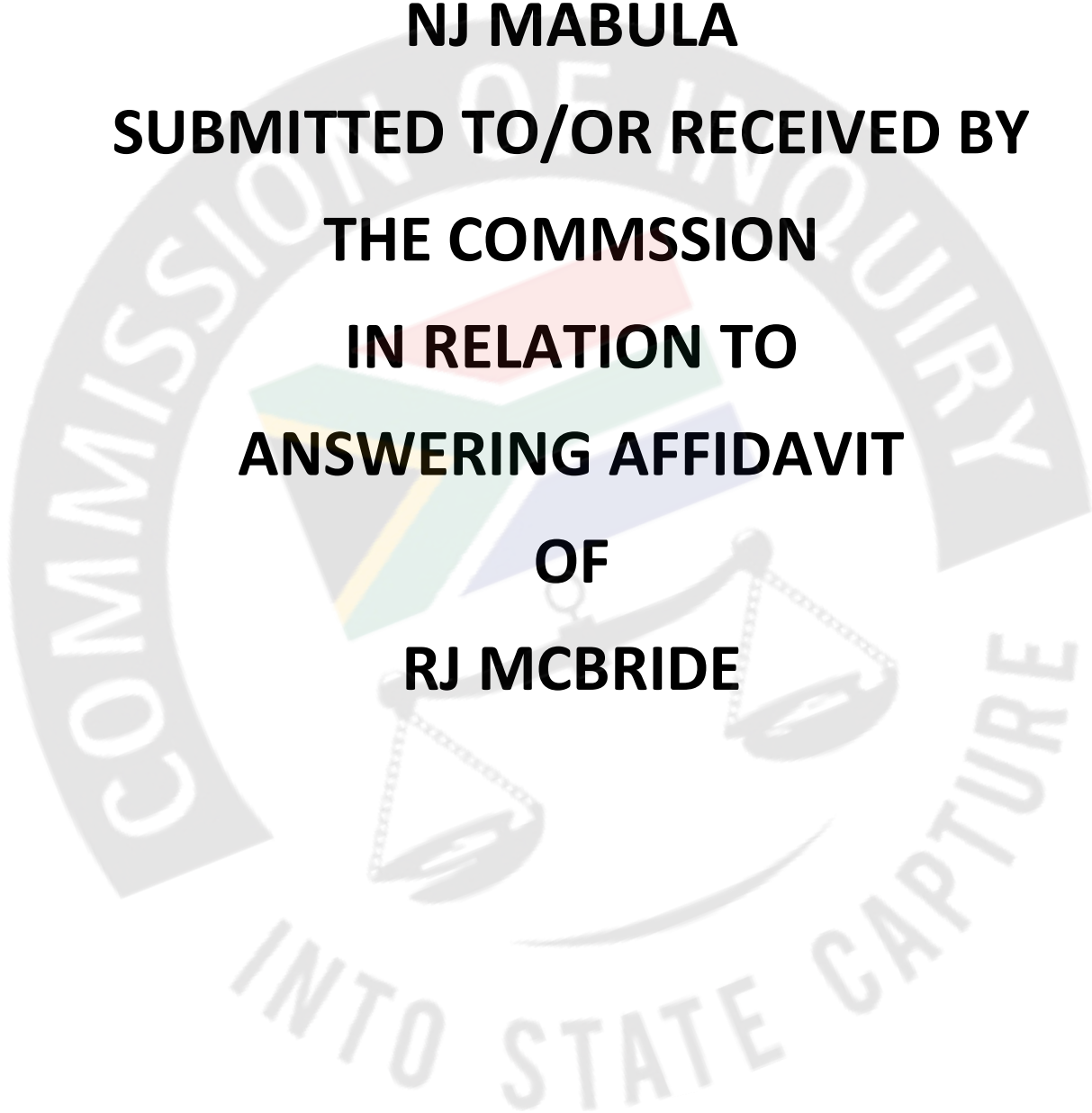


Exhibit Y16(d)





2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

NOTICE IN TERMS OF RULE 3.3

TO : MAJOR-GENERAL JAN MABULA
EMAIL : mabulanj@saps.gov.za

**IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF
INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND
FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE
COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:**

- 1 The Commission’s Legal Team intends to present evidence of Mr Robert McBride (“**Mr McBride**”) at its hearing held at 4th Floor, Hill on Empire, 16 Empire Road, Parktown, Johannesburg. The presentation of this evidence will commence on 11 April 2019 until its conclusion. The evidence in question implicates, or may implicate you in unlawful, illegal or improper conduct.
- 2 The allegations in the evidence of Mr McBride implicates or may implicate you in, *inter alia*, the following respects:
 - 2.1 You improperly and/or unlawfully sought to-
 - 2.1.1 unduly interfere in the investigative independence of the National Prosecuting Authority (“NPA”), the Independent Police Investigative Directorate (“IPID”) and/or the Directorate for

Priority Crime Investigation (“DPCI”) commonly known as the HAWKS;

- 2.1.2 unduly delay and/or decline recommended prosecutions;
- 2.1.3 participate in the undue persecution of officials of the NPA, IPID and/or the DPCI; and
- 2.1.4 destabilize the NPA, IPID and/or the DPCI.

2.2 In acting as set out above, you allegedly sought to enable the state capture of the criminal justice system.

3 The relevant portions of the statement of Mr McBride which implicate, or may implicate, you in the above allegations are annexed hereto marked “A”. Your attention is drawn to paragraphs 14, 50, 78 and 87-117 of his statement and the annexures referred to therein, if any.

4 Due to the fact that you are implicated or may be implicated by the evidence of Mr McBride, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr McBride will be uploaded on the Commission’s website (www.sastatecapture.org.za) as soon as he concludes his evidence. The transcript will be uploaded daily.

5 If you wish to:

- 5.1 give evidence yourself;
- 5.2 call any witness to give evidence on your behalf; or
- 5.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

- 6 An application referred to in paragraph 5 above must be submitted to the Secretary of the Commission. The application must be submitted with a statement from you in which you respond to the witness's statement in so far as it implicates you. The statement must identify what parts of the witness statement are disputed or denied and the grounds on which they are disputed or denied.
- 7 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.
- 8 Please take note that even if you do not make an application under Rule 3.4:
 - 8.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and
 - 8.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 9 The extracts of the witness statement provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.

DATED AT PARKTOWN ON THIS 8th DAY OF APRIL 2019.



MR P PEDLAR
Acting Secretary
Judicial Commission of Inquiry into Allegations of
State Capture, Corruption and Fraud
in the Public Sector including Organs of State



AFFIDAVIT
ROBERT JOHN MCBRIDE

I, the undersigned

ROBERT JOHN MCBRIDE

do hereby make oath and state:

- 1. I am an adult male and a citizen of the Republic of South Africa. I am appointed as Executive Director of the Independent Police Investigative Directorate (IPID).**
- 2. The facts contained herein fall within my own personal knowledge, unless the contrary appears from the contents hereof, and to the best of my belief are both true and correct.**

The Independent Police Investigative Directorate

- 3. IPID provides independent oversight over the South African Police Service (SAPS) and Municipal Police Services (MPS).**
- 4. The independence of IPID is entrenched in our Constitution. Its independent oversight function is essential to ensure lawfully functioning police services in South Africa.**

Legislative mandate

- 5. IPID is an independent body established by the Independent Police Investigative**

 **MP**

Overview

9. The purpose of this affidavit is to demonstrate through my personal experience how constitutionally appointed oversight have been interfered with to limit and impair their important function.
10. I will explain how I was unconstitutionally suspended on 20 March 2015. Once suspended from my office competent members of IPID were transferred from the organisation and replaced with persons of mediocre calibre, thus effectively hollowing out the organisation, and leaving it with a much-reduced capacity.
11. My suspension was lifted on 6 September 2016 after 18 months when it was declared unconstitutional by the Constitutional Court and I returned to a weakened organisation which struggled to carry out its oversight mandate.
12. I together with other key law enforcement officers were maliciously neutralised and charged with a variety of trumped up criminal charges to weaken and gain control of our oversight and policing functions. In this respect I refer to General Anwar Dramat, General Shadrack Sibiya and General Johan Booysen.
13. The criminal charges against Generals Sibiya and Dramat, as well as those preferred against my IPID colleagues and myself, were all subsequently withdrawn. There was no substance to these charges, and they were nothing less than malicious, of no substance and politically inspired. Similarly, the process of instituting charges against Booysen can also be shown to be politically inspired and probably malicious.
14. This situation is contrasted by matters that ought to have forged ahead in respect of investigation and prosecution but have been consistently interfered with. By way of example the Toshani Panday, General Richard Naggie Mdluli, General Khomotso Phahlane and General Jan Ntebo Mabula matters are prime examples



of prosecutions that should have proceeded to finality by now.

15. In my view this is the *modus operandi* that has been used to 'capture' law enforcement agencies including the National Prosecuting Authority (NPA) and has led to a weakened Criminal Justice System.

Appointment and Conflict with the Minister of Police

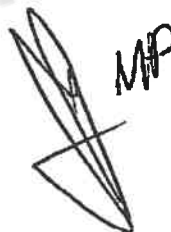
16. Prior to my appointment, and unbeknown to me, on 22 January 2014, IPID issued a progress report on the so called "Rendition Case". This is a matter in which it was alleged that Generals Dramat and Sibiya were implicated in the planning and execution of the 2010 operation that led to the illegal repatriation of five Zimbabweans. In this progress report it was recommended that Dramat and Sibiya be criminally charged with kidnapping and defeating the ends of justice.
17. I was appointed the Executive Director of IPID on the 3rd March 2014, in terms of section 6 of the IPID Act. I annex hereto marked Annexure D, a copy of my CV.
18. Upon my appointment, I asked to be briefed on all high-profile cases. One of the cases I was briefed on was the "Rendition Case" mentioned above in paragraph 16. After the briefing it became clear to me that the investigation had not been conducted independently and impartially in line with IPID Act. This was because members from SAPS Crime Intelligence (CI) had conducted the investigation and had presented their case file to IPID. In the case file there were some statements that appeared to implicate Generals Dramat and Sibiya. I was not satisfied with this, as CI do not have an investigative function, and this smacked of an attempt by CI to present their work as the work of an independent IPID investigation.
19. As a result of the briefing I was not satisfied that the evidence in the case file reliably established that Generals Dramat and Sibiya were on the crime scene as alleged, nor was I satisfied that the evidence contained in the file was fair and credible.

Rendition Investigation, dated 22 January 2014 ("the first report") with myself. However, it should be noted that I did not even know about the existence of the report that was supposedly altered as it predated my appointment as IPID Executive Director.

47. During the eighteen (18) months of my suspension, I heard about Kgamanyane wreaking havoc in the IPID by initially suspending and transferring at least eight (8) senior managers for no other reason than that they worked with me or that they deposed to affidavits about information which was within their knowledge as IPID employees.
48. At the time of my return to the IPID, on 19 October 2016, the Constitutional Court had confirmed the High Court decision to declare my suspension unlawful and set it aside. I had found that additional members at IPID had also been displaced under the so-called "restructuring".

Suspensions, transfers and dismissals

49. I now deal with the suspensions and transfers that occurred immediately following my suspension.
50. Sesoko was the Chief Director of Investigations and Information Management. He is the Head of Investigations. He made an affidavit in my application to challenge the constitutionality of section 6(3) and 6(6) of the IPID Act, Act 1 of 2011. He was suspended on 21 May 2015. He was charged with altering the report into the Zimbabwe renditions investigation. As soon as Kgamanyane was appointed as Acting Executive Director, he asked for the Panday case which was under investigation by IPID. To date, this case is not on the court roll. Kgamanyane also went to Limpopo and the North West and collected dockets in which former DPCI Head, Mthandazo Berning Ntlemenza and Major-General Jan Mabula were suspects.



was done by Nhleko and Ntlemeza without any consultation. There is no greater example of interference in the operations of the IPID by a minister who had been found to have acted unlawfully and unconstitutionally by the Constitutional Court. To make matters worse, Kgamanyane was facing disciplinary action for the havoc he had caused at IPID. I wrote to Ntlemeza about my concerns.

Infiltration of IPID by Crime Intelligence

78. I also found that IPID had been infiltrated by Crime Intelligence in the form of Brigadier Tlou Kgomo ("Kgomo") and others. Kgomo had been appointed as Director: Investigations. He was appointed to act as head of investigations in Sesoko's position. He returned to Crime Intelligence soon after my return to office. My next encounter with Kgomo was in Parliament where he was part of Phahlane's team to counter IPID's investigations. Kgomo would later approach IPID investigators, Mandla Mahlangu ("Mahlangu") and Cedrick Nkabinde ("Nkabinde"), to offer them Brigadier positions to induce them to make false statements to implicate IPID managers in wrongdoing. In a recording made by Mahlangu, Kgomo can be heard making such an offer to Mahlangu. He confirms to Mahlangu that he is working with the North West team led by Major General Jan Mabula ("Mabula") investigating a concocted case that would bring me "down", along with other IPID investigators and torpedo the investigation against Phahlane. Kgomo also took Mahlangu to Potchefstroom to meet Mabula (which is discussed below). See **Annexure Q** for the transcript of the recording (**Recording 2** to be handed up as an **Exhibit "U2"**). The recording will be made available to the Commission at the Chairman's discretion.
79. Upon my return from my suspension on 19 October 2016 I was alerted to irregularities on how investigations had been conducted during the time when I was on suspension. There were allegations that certain cases that were being investigated by the IPID had been pre-maturely closed without carrying out proper investigation processes as contained in the Standard Operating Procedures. This



to the SAPS. Furthermore, there were vehicles in Phahlane's possession that, according to him, were either purchased and owned by him or sponsored for his use. The IPID investigated all cases and there was clear evidence of a corrupt relationship between Phahlane and service providers to the SAPS.

84. During January 2017 a search warrant was executed at the Sable Hills home of Phahlane. The purpose of the search was to identify the music system that was bought and paid for by a SAPS service provider. Present at the search was the person who had installed the music system. This was for purposes of identifying and confirming that the music system in Phahlane's house was the same music system that had been purchased by funds from a SAPS service provider and that it had installed in Phahlane's house.
85. After the search warrant was executed at Phahlane's house, he initiated a civil suit challenging the lawfulness of the search warrant.

Counter-investigation

86. The parties have exchanged papers in the civil suit matter but it became dormant since the latter part of 2017. Recently one of the original Task Team members, Cedrick Nkabinde, (who was approached by Kgomo as mentioned in paragraph 78), deposed to a supporting affidavit for Phahlane. At the time Nkabinde was undergoing a disciplinary process for several acts of misconduct. Nkabinde resigned with immediate effect, on 19 October 2018, and his disciplinary hearing did not proceed.
87. I want to pause here and go back to when the initial investigation into the case of corruption and money laundering was initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he and attorney Sarah-Jane Trent accompanied IPID investigators to the Sable Hills Estate to point out witnesses that he had identified, to the IPID investigators.

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88. As a result of the on-going investigations by the IPID assisted by O'Sullivan and Trent, Phahlane used his powers as the Acting National Commissioner to set up a team from the North West (Mabula Team) to start a counter-investigation against the IPID investigation team.
89. This SAPS counter-investigation was authorised under the guise of a security breach against the Acting National Commissioner. The Acting Divisional Commissioner General Makhele and the North West Provincial Commissioner General Motswenyane, together with the Mabula Team concocted a report that was utilised to authorise their travel to Gauteng to investigate the purported security breach. Crime Intelligence ("CI") had earlier done an investigation of the alleged security breach and it found that there was in fact no security breach. The officers who did the investigation made statements to this effect. As a result of the concocted report a second charge of defeating the ends of justice was registered against the Mabula Team and other Generals. In the course of that investigation General Makhele attempted to interfere with that investigation and she was charged with defeating the ends of justice and contravention of Section 33 of the IPD Act. All three case are still with the NPA.
90. The Mabula Team then proceeded to counter the investigation of the IPID by approaching all the witnesses in the IPID investigation to get them to change their initial version against Phahlane and the SAPS service providers and their involvement in the construction of Phahlane's house and the cars.
91. Their counter-investigation resulted in a case being opened, Kameelfdrift CAS 12/01/2017, against O'Sullivan and his associate Trent. The charges that related to them were amongst others of accompanying IPID officials to Phahlane's Sable Hills home and impersonating IPID officials in terms of section 33(5) of the IPID Act. These were clearly trumped up charges.



92. During Trent's arrest her mobile phone was unlawfully confiscated by the Mabula Team and booked in for investigation in order to try and support the charges that were being fabricated against the pair and later on the IPID investigators that were added.
93. O'Sullivan and Trent made several appearances in the Pretoria Magistrate Court on these charges.
94. In about May 2017 Brigadier Ncube of the Mabula Team, on the instruction of State Advocate Molatlhwa Mashuga ("Mashuga"), charged IPID investigators Mahlangu and Binang for allegedly contravening section 33(5) and section 33(2) of the IPID Act. The two IPID investigators were part of the Task Team investigating the Phahlane matter. They were joined to O'Sullivan and Trent and were required to appear at Pretoria Magistrate Court.
95. Trent's phone was stolen by the Mabula Team and taken to Israel to be downloaded. The contents were leaked to the Sunday Times in a bid to falsely implicate myself and my investigators in wrongdoing to protect Phahlane.
96. There was a litany of charges that were brought against Mahlangu and Binang who were members of the IPID Task Team. At the top of the list were charges of contravening section 33(5) and section 33(2) of the IPID Act. The two investigators were added in State versus Sarah-Jane Trent and three others, which was held at the Pretoria Magistrate Court. When Ncube had earlier come to IPID to obtain the statements of Mahlangu and Binang, I asked him why he was in Gauteng as he was based in the North West. He opened a case of intimidation against me.
97. The State Advocate in the matter was Mashuga, who also has some links to the North West SAPS team. The case was remanded several times for further



investigation until October 2017, when the accused made an application that the matter be struck off the roll in terms of section 342A(3)(c) of the Criminal Procedure Act, No 51 of 1977, which deals with unreasonable delays in a matter before a court.

"(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-

*(a) *;*

*(b) *;*

(c) where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;"

98. The Magistrate made an order that the matter be struck off the roll in terms of the above-mentioned section. The matter could therefore only be re-enrolled with the written instruction of the NDPP, Shaun Abrahams at the time. This order by the Magistrate was made in October 2017.

99. It's important to indicate that neither the order by the Magistrate made in terms of section 342A(3)(c) of the Criminal Procedure Act nor the Prinsloo J Order, made in November 2017, stopped the Mabula Team from continuing with their counter investigation. This was clear when immediately after both orders Ncube took another warning statement, this time against Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself. Despite all the threats the fabricated case is yet to be re-enrolled, further proving that the charges

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are baseless and are trumped up.

100. Various aspects concerning these arrests and prosecutions were illegal and are now the subject of civil litigation.

Interdict Against Counter-Investigation

101. With the on-going counter-investigation by the Mabula Team, it was clear that the intention was to impede the IPID investigation. In consequence IPID brought an urgent application before the North Gauteng High Court to stop the counter-investigation, and also to seek a declaratory order that members of the SAPS who were themselves subjects of an investigation by IPID should not investigate or oversee an investigation against members of the IPID.
102. An urgent interdict was initially sought against Phahlane, the North West Provincial Commissioner, Mabula and Brigadier Ncube. Later, in the main application, the other members of the Mabula Team were added as respondents as they were conducting this counter-investigation against members of the IPID.
103. Throughout the exchange of papers in this matter, the Mabula Team insisted that the cases that the IPID stated they were investigating against them were "cold cases". This was proven to be false as a list was annexed in the papers to show the status of the cases against the members of the Mabula Team.
104. It is, in any event, disingenuous for Mabula to say as the evidence shows that the only reason the cases had not progressed was due to them being suppressed. There is a recording in which one of the suspects admits to torturing the deceased in the Makau case and he implicates Mabula. (See Recording 3 to be handed up as Exhibit "U3"). A copy of the transcript is annexed hereto marked Annexure R. The recording will be made available to the Commission at the Chairman's

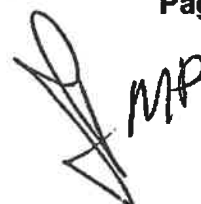
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discretion.

105. An agreement was reached by the parties and it was made the order of court by Prinsloo J. At the time the order was made, Phahlane had been suspended as the Acting National Commissioner and General Mothiba had been appointed to act. Prior to the Prinsloo J order that was made on 28 November 2017, Mothiba had also been engaged on countless occasions to try and resolve the matter outside of the courts.
106. Prior to the Prinsloo J order, there had been countless engagements with different senior management of the SAPS in a bid to avoid litigation and come to an amicable solution to the number of civil suits that were in the courts.
107. The Portfolio Committee on Police also interfered by requesting an appearance and briefing by Phahlane, whilst he was still acting National Commissioner.
108. These attempts at "resolving the conflict" were unprecedented and impeded on IPID's independence.
109. Despite obtaining an Order from Prinsloo J the Mabula Team continued with their counter-investigation against the IPID. Mabula and his team continued harassing and attempting to intimidate IPID members to impede the IPID investigation into Phahlane. Ncube took warning statements from Mantsha Raphesu and threatened to arrest the other members of the Task Team including myself. These threats came to nothing but did have the effect of frightening and restricting some of the IPID investigators.
110. As a result, IPID continued to engage the SAPS, the Ministry as well as the office of the NDPP, trying to ascertain whether the continuing investigation was sanctioned at a senior level.



111. Meetings were also held with General Khehla Sitole ("Sitole") and Minister Cele, after their appointments to their respective offices, in order to inform them of these matters and also with a hope that there would be meaningful intervention.
112. Despite all these efforts on the part of the IPID, as well as the numerous letters to the various stakeholders, the National Commissioner only indicated that he would abide the order of court. The Minister on the other hand was unrepresented when the matter was argued for a final order on 21 June 2018.
113. The matter was set down for argument before Judge Tuchten on 21 and 22 June 2018. Phahlane agreed that he would not take part in, or oversee any investigation that was carried out by the members of the Mabula Team. This formed part of the order by Tuchten J made on 26 June 2018. The order by Tuchten J is annexed as Annexure S.
114. An important point to note is that, the National Commissioner of the SAPS, General Sitole, prior to the proceedings, entered a notice agreeing that he would abide the order of the court.
115. The interpretation of this notice to abide, coming from the National Commissioner's office led to the question that if the Commissioner abides by the prayers of the IPID, what *locus standi* did the members of the Mabula Team have to continue with an investigation that did not seem to be sanctioned by the Head of the SAPS?
116. There were arguments for both sides and at the last minute the Deputy National Commissioner, General Sindile Mfazi, gave a written undertaking that the members of the Mabula Team would no longer be involved in any "revenge-investigations" against members of the IPID that were investigating them.
117. The term "revenge-investigation" was made by Judge Tuchten in his judgment on



26 June 2018. The order was in effect drafted around section 25 of the IPID Act, which speaks to instances where an investigator has a conflict of interest in any investigation that he carries out that he would have to declare such interest. The SAPS Act does not have a similar clause that deals with conflicts of interest. The Judge in this matter added that such members of the SAPS should also be precluded from overseeing such investigation.

118. Further, the above gap in the SAPS legislation would be temporarily resolved by the Tuchten Judgment until such a time that there were appropriate regulations or standing orders or national legislation dealing with this gap.

Court order regarding search and seizure by Phahlane on vehicle investigation

119. During the investigation into the Phahlane vehicle case, IPID discovered that there were several SAPS service providers who were apparently engaged in corrupt relationships with Phahlane. Amongst the facilitators and/or service providers were the following: Durandt Snyman, Keith Keating, the proprietor of Forensic Data Analyst ("FDA") and others. The relationship between these parties was unravelled and IPID together with members of DPCI conducted search warrants on the properties of the above-mentioned service providers on 4 December 2017.
120. The lawfulness of the search warrants was challenged. The applicants raised technical challenges against the affidavit utilised to authorise the search warrant by the magistrate. In addition they contended that the IPID officials are not police officials and therefore cannot execute a search warrant in terms of the Criminal Procedure Act as well as other technicalities.
121. The matter was set down and heard on 18 June 2018. The judgement was delivered on 3 August 2018 by Judge Kollapen. This judgment dealt thoroughly with all the technical points raised by the applicants and ruled in favour of IPID.

141. I can only conclude that the PCP elected not to exercise its oversight function for political reasons.

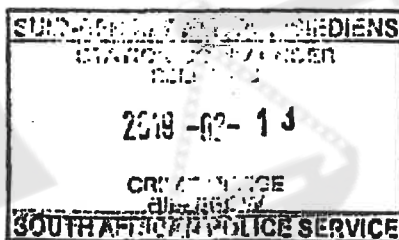
I know and understand the contents of this declaration.

I have no objection to taking the prescribed oath.

I consider the prescribed oath to be binding on my conscience.


ROBERT JOHN McBRIDE

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and affirmed before me at Hillbrow on this the 13th day of February 2019, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



 0920019-3
w/o
COMMISSIONER OF OATHS

FULL NAMES: MOLOKELA PHINGA RAPHE

DESIGNATION: NARRANI OFFICER

ADDRESS: 01 Clarendon Place

MP

Exhibit Y16(e)





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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

25 March 2020

To: Major-General Mabula

Per email: pdp@bdk.co.za / johane@bdk.co.za / louisa@bdk.co.za

And to: Mr Robert McBride

Per email: rjmcbride63@gmail.com

APPLICATION FOR LEAVE TO ADDUCE EVIDENCE AND TO CROSS-EXAMINE

Applicant: Major-General Ntebo Jan Mabula

Witness implicating the applicant: Mr Robert McBride

1. The above-mentioned applicant and witness are thereby notified that the Chairperson of the Commission has made the following decision in the applicant's application for leave to adduce evidence and to cross-examine the above-mentioned witness before the Commission in connection with the above-mentioned witness's evidence or statement.

1.1. Chairperson's decision:

- (a) "In as far as the applicant may have failed to timeously deliver his/her application for leave to adduce evidence and to cross-examine the above-mentioned witness and applied for condonation, condonation is hereby granted.
- (b) The applicant is hereby granted leave to adduce evidence and to cross-examine the above-mentioned witness.
- (c) The date when the applicant will adduce evidence and to cross-examine the above-mentioned witness will be communicated to both the applicant and the above-mentioned witness in due course."

Yours sincerely



Ms KB SHABALALA
ACTING SECRETARY, JUDICIAL COMMISSION OF INQUIRY INTO
ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE
PUBLIC SECTOR INCLUDING ORGANS OF STATE

