



EXHIBIT Y 4.1 & Y 4.2

**AFFIDAVIT,
SUPPLEMENTARY AFFIDAVIT
& ANNEXURES**

OF

**HUMBULANI INNOCENT
KHUBA**



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

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INDEX: EXHIBIT Y 4

	Description	PAGES
4.1	Affidavit of Humbulani Innocent Khuba	001 to 036
	Annexure "HIK 1"	037 to 042
	Annexure "HIK 2"	043 to 045
	Annexure "HIK 3"	046 to 047
	Annexure "HIK 4"	048 to 050
	Annexure "HIK 5"	051 to 058
	Annexure "HIK 6"	059 to 064
	Annexure "HIK 7"	065 to 066
	Annexure "HIK 8"	067 to 102
	Annexure "HIK 9"	103 to 130
	Annexure "HIK 10"	131 to 134
	Annexure "HIK 11"	135 to 136
	Annexure "HIK 12"	137 to 176

Description		PAGES
	Annexure “HIK 13”	177 to 251
	Annexure “HIK 14”	252 to 253
	Annexure “HIK 15”	254 to 255
	Annexure “HIK 16”	256 to 258
	Annexure “HIK 17”	259 to 282
	Annexure “HIK 18”	283 to 285
	Annexure “HIK 19”	286 to 290
	Annexure “HIK 20”	291 to 296
	Annexure “HIK 21”	297 to 300
	Annexure “HIK 22”	301 to 303
	Annexure “HIK 23”	304 to 306
	Annexure “HIK 24”	307 to 314
	Annexure “HIK 25”	315 to 341
	Annexure “HIK 26”	342 to 349
	Annexure “HIK 27”	350 to 364
	Annexure “HIK 28”	365 to 375
4.2	Supplementary affidavit of Humbulani Innocent Khuba	376 to 379
	Annexure “HIK 6”	380 to 381
	Annexure “HIK 15”	382 to 383



ZONDO COMMISSION

Mr I Khuba

Provincial Head: IPID Limpopo

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE
(IPID)

SWORN AFFIDAVIT

I, the undersigned,

HUMBULANI INNOCENT KHUBA

do hereby make an oath and state the following in English:

1. The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true and correct.
2. I am an adult male and a Chief Director in the employment of the Independent Police Investigative Directorate ("IPID") as a Provincial Head for Limpopo based in Polokwane.
 - A. **My employment with the Independent Complaints Directorate ("ICD") and IPID**
3. I commenced employment with the IPID, formerly Independent Complaints Directorate ("ICD"), on 1 January 1999 as the Assistant Director: Investigations, for the Northern Cape Province. During February 2000, I was requested to supervise the investigations in the Free State Province. At the end of 2000, I was appointed as the Acting Head of the Northern Cape Province Provincial Office.
4. I joined the IPID on 01 January 2009 when it was still known as the Independent Complaints Directorate ("ICD"). Hitherto, I had been employed by the Anglo American Gold Division as an investigator for two years.

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5. During June 2001, I was appointed as the Provincial Head for Limpopo Province in the post of Deputy-Director. During 2003, I was also assigned the responsibility of managing the Mpumalanga Provincial office. On 1 July 2007 I was promoted to the level of Director.
6. During 2011, I was transferred to the Kwa-Zulu Natal Province for a period of six months to assist the office with achieving the Departmental Strategic objectives. After completion of the six-month period, I reverted back to my post in Polokwane.
7. At the beginning of 2012, I was re-assigned to Kwa-Zulu Natal to head the task team investigating the so-called Cato Manor police death squad. I was forced to leave this post after my life was threatened. I returned to Polokwane as Provincial Head for Limpopo Province as a Director.
8. During 2012 I was appointed by the executive director to investigate all complaints against Major-General Shadrack Sibiya ("**General Sibiya**") who at the time was stationed with the Directorate of Priority Crimes Investigation ("**DPCI**"- commonly known as "**the Hawks**"). This was outside of my area of jurisdiction and hence, the need for me to be formally appointed to conduct this investigation.
9. On 1 April 2012, the IPID Act became operational and the ICD became known as IPID and was regulated under the new Act.
10. On 23 October 2012, I was appointed by Mr Mathews Sesoko ("**Mr Sesoko**") the Acting Head of Investigations at IPID to investigate the illegal rendition of five Zimbabwean nationals dealt with by me more fully below.

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11. On 1 October 2014, I was appointed as the Provincial Head for Limpopo Province as a Chief Director.

B. My investigation into the renditions matter

12. Around July 2012, I was informed by Mr Sesoko that I would be appointed to conduct an investigation into a matter involving the rendition of the Zimbabweans to Zimbabwe, who were subsequently killed. I then travelled to Pretoria to attend a meeting between Ms Jenny Qoboshiane ("**Ms Qoboshiane**") who was then the Secretary for Police, the head of IPID, Mr Francious Beukman ("**Mr Beukman**"), Mr Sesoko and myself to discuss the rendition matter. At this stage we were not handed the docket and were told by Ms Qoboshiane that the Minister, Mr Nathi Mthethwa ("**Minister Mthethwa**") wished us to hold off on the investigation until further notice.
13. On 23 October 2012, Mr Sesoko informed me that he had received instructions from the acting Executive Director of IPID, Ms Koekie Mbeki ("**Ms Mbeki**"), who had since replaced Mr Beukman, to now proceed with the investigation into the rendition of the five Zimbabwean nationals. Mr Sesoko handed me a letter of appointment and the criminal case docket in the matter, registered in Gauteng, being: Diepsloot CAS 390/07/2012, for me to investigate further. At that time, I was dealing with high profile cases in the department which included the 'so called' Cato Manor "Death Squad" in Durban.
14. I was instructed to assemble my own team to assist me in the investigation, which I did. The team comprised of the following individuals: Mr Kenneth Ratshitali, Mr L Maphetho, Mr N Mulaudzi and Mr T Mashaphu who were all investigators from the Limpopo IPID office.

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investigation. This is particularly so as General Sibiya was implicated and IPID had already been briefed on the matter and expected to carry out the investigation, and only did not do so as IPID had been informed to hold off on the investigation. I was thus, surprised to find that instructions had been furnished to CI to proceed with the investigation.

19. Moreover, it appeared that certain of the affidavits had been obtained by CI even before IPID had been informed about the investigation.
20. Upon meeting with Colonel Moukangwe, he instructed me to work with two Advocates from the National Prosecuting Authority ("**NPA**"), namely: Advocates Anthony Mosing ("**Advocate Mosing**") and Billy Moeletsi ("**Advocate Moeletsi**"), as the pair had already been guiding the investigation since its inception.
21. Shortly after I began my investigation, I briefed Ms Mbeki on the case and informed her that, despite her instructions to keep Colonel Moukangwe's involvement secret, I would have to consult with Mr Sesoko, as the then Acting National Head of Investigations at IPID, as Mr Sesoko was consulted and briefed on all national investigations.
22. To my surprise, Ms Mbeki categorically instructed me not to work with, or to discuss the case with Mr Sesoko. This was extremely unusual and contrary to Standing Operation Procedures ("**SOP**")'s of IPID, which require that all national investigations be directed by the National Head of Investigations. In my almost 16 years of service with the Department, this was the first time that I had received an instruction to exclude the National Head of Investigations on national project investigations.

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23. As this instruction required me to breach the SOPS of IPID, I felt compelled to inform Mr Sesoko that I had been instructed to proceed with the rendition investigation, but had been instructed by Ms Mbeki not to involve him in the investigation. Although Mr Sesoko was surprised by this, as Ms Mbeki was the Acting Executive Director and Head of the Department, he said that we were obliged to comply with her instruction.
24. I thus investigated the case, without Mr Sesoko's involvement, but kept Colonel Moukangwe appr+ised of the investigation, as I had been instructed by Ms Mbeki to do. Colonel Moukangwe would always request me to fax or email him a copy of the documentation, however before doing so, I felt that I had better first check with Ms Mbeki whether I should share the evidence in the docket with him. Ms Mbeki informed me that as Colonel Moukangwe was a member of the investigation team, she felt he had a right to the content of the docket. She reiterated that the only thing required of me was to keep his involvement secret.
25. What is strange is that Colonel Moukangwe did not want me to send copies of the documentary evidence and witness statements to his official email or his private email botsotsomoukangwe@gmail.com, and wanted me to send these documents to an unknown email, june16@gmail.com. Colonel Moukangwe, furthermore, preferred that I email the documents from the Southern Sun Hotel on Church Street in Pretoria where I would stay, when I was in Gauteng, rather than using the Department's email system. It was thus, readily apparent that Colonel Moukangwe also wanted to keep his involvement secret.
26. Advocate Mosing was, for some reason, extremely keen to finalise the rendition investigation and put pressure on me to prioritise the investigation,

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notwithstanding that I was involved in numerous other investigations. He frequently required me to consult with him in Pretoria, which required my travelling from Limpopo and obtaining accommodation. On one such occasion during April 2013, Ms Mbeki noticed that I was in Pretoria consulting with him. She was not happy about this as she felt I had not obtained her authorisation. She told her personal assistant, ("PA") to contact me to tell me this and that the Department would not pay my travelling or accommodation costs.

27. I addressed an email to Ms Mbeki on 22 April 2014, explaining that I never meant to undermine her authority and that I had sent her a weekly work plan which included my consultation in Pretoria with Advocate Mosing. I requested her permission to again travel to Pretoria to finalise the Section 205 statement with the advocate as they wanted to finalise the investigation that week and offered to pay for my travel costs and to arrange private accommodation. I annex a copy of the e-mail sent by me to Ms Mbeki, together with my work plan, hereto marked "Annexure "HIK 1."

28. In view of Ms Mbeki's attitude, when, on 5 July 2013, Advocate Mosing again requested me to consult with him, I asked him to please request Ms Mbeki's permission. He, accordingly, addressed an e mail to her, which he copied to me, wherein he informed Ms Mbeki as follows:

"Dear Ms Mbeki, I confirm that I met with Mr Khuba this week where we discussed progress of this matter. I am instructed by my principal to draw up the charge sheets and am in the process to do so. There are however certain investigations discussed with Khuba that requires speedy attention. The plan is to wrap up this investigation without delay and we agreed that he devote the

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whole of next week for this purpose. It is not possible to complete the charge sheet when there are issues outstanding. I trust that you will give him the necessary permissions and support to finalise this. Especially now that very important new statements were obtained this week. I trust that you will find this in order. Kind regards.

A MOSING

HEAD: SPECIAL PROJECTS DIVISION

OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

NATIONAL PROSECUTING AUTHORITY

REPUBLIC OF SOUTH AFRICA

29. I annex a copy of this email hereto marked **Annexure "HIK 2."**
30. I found the email interesting as it appeared that Advocate Mosing was under pressure from his superiors to draw up the charge sheet, notwithstanding that the investigation had not yet been finalised, and on his own admission, there were still issues that were outstanding. It was clear that a decision had already been taken to charge the suspects, General Sibiya, Lieutenant-General Anwa Dramat ("**General Dramat**"), the then Head of the Directorate of Priority Crime Investigations ("**DPCI**, also known as the **Hawks**"), and the other members of the Hawks, and that the further investigations were simply to ensure that this aim could be achieved.
31. It is of some significance that the "important new statements" referred to in the email were deposed to by members attached to CI placing General Dramat at

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the offices where one of the Zimbabwean nationals was brought after his arrest, which I will explain below, proved to be false.

32. During September 2013, I needed Mr Sesoko's involvement in the drafting of questions for the suspects to respond to. In view of Ms Mbeki's explicit instructions that I not involve Mr Sesoko, on 30 September 2013, I requested Ms Mbeki in writing to allow Mr Sesoko to assist. A copy of this correspondence is attached as **Annexure "HIK 3."**
33. A key witness in the investigation was Lieutenant-Colonel Ndanudleni Richard Madilonga's ("**Colonel Madilonga**") who had deposed to an affidavit implicating General Dramat.
34. On 13 October 2013, the Sunday Times published the details of Colonel Madilonga's statement and how it implicated General Dramat. After this, I realised that someone on the investigating team was leaking information to the media and I became very concerned about Colonel Madilonga's safety as his identity had been revealed. I phoned Advocate Mosing on that same Sunday and he also expressed his disappointment. It was precisely because of the possibility of such leaks occurring which could prejudice the investigation that I had been extremely uncomfortable in involving outside parties in the investigation, and sending evidence to an unknown email address.
35. On 31 October 2013, I addressed a letter to Ms Mbeki, annexed hereto marked **Annexure "HIK 4."**, requesting that everybody involved in the investigation, especially my team, be polygraphed to determine who had leaked the details of Colonel Madilonga's statement to the media. Advocate Mosing also volunteered to undergo polygraph test with the rest of the investigative team. Ms Mbeki

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however, did not seem particularly interested in determining who had leaked the information and no steps were ever taken to polygraph the members of the investigative team.

36. Colonel Moukangwe displayed a similar attitude and asked why I was worried about the leaking of information when Minister Mthethwa and my boss, Ms Mbeki, were not. He said they would never ask me about it, and he was correct, they did not. I got the distinct impression that Colonel Madilonga's statement had been intentionally leaked and that Colonel Moukangwe had been aware of it. In retrospect, I suspect that the statement was leaked to justify the decision that had been taken to charge General Dramat, to remove him as Head of the Hawks and to replace him with Major-General Berning Ntlemeza. ("**General Ntlemeza**")

C. Major-General Berning Ntlemeza and Major-General Mdluli's involvement

37. Although I was reporting progress on the case directly to Ms Mbeki, at some stage General Ntlemeza, who at that stage was the Deputy Provincial Commissioner of the South African Police ("**SAPS**") in Limpopo, started showing interest in the case.
38. During 2013, a few months after obtaining Colonel Madilonga's affidavit, General Ntlemeza requested a meeting with me. I knew General Ntlemeza as he and I had developed a close working relationship as the IPID and SAPS worked closely together in the Limpopo province, where both of us were stationed at the time.
39. I met with General Ntlemeza at the 'Wimpy' in the Cycad Centre in Polokwane, where he informed me that he had valuable information that could assist me in

M-s

141

the investigation of the rendition case. He was with an officer from the Eastern Cape, whose name I cannot recall, who claimed that when he attended a course in Cape Town, Colonel Maluleke (who is the person who was ultimately responsible for arranging for the rendition of the five Zimbabweans back to Zimbabwe), confessed to him that he had previously arrested Moyo (one of the victims of the rendition) in Zimbabwe and brought him to South Africa.

40. According to the story told to me, Moyo had been wanted in South Africa for several crimes he had committed, but had managed to escape to Zimbabwe. Colonel Maluleke then devised a plan, with the co-operation of the Zimbabwe police, to bring him back to South Africa to stand trial. The Zimbabwean police arrested Moyo, in the presence of Colonel Maluleke, and shot him in the leg. Hereafter, Colonel Maluleke apparently posed as a South African doctor who requested that the Zimbabwean authorities permit him to take Moyo to South Africa so that he might obtain urgent medical attention to heal his gunshot wound. Once in South Africa, Moyo was arrested and was ultimately convicted and is still serving time in jail in South Africa.
41. Although this was hearsay, this was of interest to me as it served to explain why Colonel Maluleke had been prepared to assist the Zimbabwean police when they sought to have the five nationals returned to Zimbabwe.
42. Subsequent hereto, I received a report from the experts who had analysed Colonel Maluleke's laptop and noticed that certain documentation contained on the laptop made reference to Moyo. This gave some credence to the version of events relayed to me by the officer from the Eastern Cape.
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43. I discussed this with Advocate Mosing, who also took an interest in the information pertaining to Moyo. He did his own investigation and emailed me a statement concerning the arrest of Moyo. He further indicated that he had obtained a statement from the person who prosecuted Moyo. He instructed me to obtain Moyo's statement from prison and check his hospital record at Musina hospital, which I did. I analysed Colonel Maluleke's cell phone records which confirmed that he was at the vicinity of the border with Zimbabwe, at the relevant time but could not confirm that he was in fact in Zimbabwe. I could also not confirm the allegation that Colonel Maluleke had posed as a doctor.
44. Although I included the reference to Moyo's prior arrest with the assistance of the Zimbabwean police in my initial report to the NPA, as I could not obtain corroboration for the version of events relayed to me by the Eastern Cape officer, and because what I had been told was hearsay, I excluded reference hereto in the subsequent follow up report prepared by me and submitted to Advocate Mosing, at the NDPP's office. I will explain the relevance of this below.
45. During another meeting with General Ntlemeza, he informed me that he had transferred Colonel Madilonga, who had implicated General Dramat, to Burgersfort and that if I needed Colonel Madilonga for anything, I should contact him (General Ntlemeza) and he would assist in making Colonel Madilonga available. I furthermore, informed him that I was worried about Colonel Madilonga's safety since he was a key witness. General Ntlemeza assured me that Colonel Madilonga was 'his man' and that he was taking care of Colonel Madilonga. General Ntlemeza also requested that I give him my wife's number as he suspected that my own number might have been intercepted.
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46. In September 2013 General Ntlemeza called me on my wife's number and requested me to come to his house. When I arrived at his house he asked me about the progress in the case. I informed him that there were still outstanding witness and warning statements which I would be able to obtain before the end of the month.
47. He told me that he regretted to inform me that his 'political principals' wanted him to head the Hawks and not IPID. I informed him that I was disappointed because I was expecting him to join us at IPID as he had earlier told me. He promised to keep in contact and assist in any investigation that I was tasked to do, as he had previously done and I needed the co-operation of the police.
48. During October 2013, my wife called me while I was watching TV and informed me that "UMhlekaazi" ("translated into the word: "gentleman" in isiXhosa) was at our gate. I knew that she was referring to General Ntlemeza and after she handed me her phone, General Ntlemeza requested me to order 'the security' to open for him as he had valuable information to tell me.
49. General Ntlemeza informed me that on that Friday he had been at the Airport when he met with Lieutenant-General Richard Mdluli ("**General Mdluli**"). General Mdluli had apparently requested him to tell me that I must not be afraid when dealing with the rendition case because there were people who were looking after me. General Ntlemeza said he was asked by General Mdluli to deploy people for my safety and that if I saw any suspicious car behind me, I should call him.
50. I was surprised because although I had heard of General Mdluli, I had never met or spoken to him before. During my entire investigation with Colonel Moukangwe,

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he also never mentioned General Mdluli's name. I did not ask General Ntlemeza anything further about his meeting with General Mdluli and informed him that if I saw anything suspicious, I would call him. It was implicit in this statement that without General Mdluli and General Ntlemeza's protection, my life may be threatened.

51. General Ntlemeza asked me when I would be in a position to submit my report to the NPA. I informed him that even though I had requested a warning statement from General Dramat, I was battling to get hold of General Godfrey Lebeya ("**General Lebeya**") who had signed one of the success reports. General Ntlemeza then called someone on his cell phone who immediately gave him General Lebeya's number. He said that my report was the one thing holding everything back regarding his move to the Hawks. I then called General Lebeya in his presence and put him on speaker phone. I requested General Lebeya to provide me with a statement regarding the rendition matter. General Lebeya said that I should come to his office in Pretoria. After providing General Ntlemeza with some refreshments, he left my house.
52. After General Ntlemeza had left, I felt extremely uneasy and spoke to my wife about my misgivings about accepting the request to investigate the rendition case, as I did not know what I had gotten myself into.
53. This, together with the leaking of Colonel Madilonga's statement to the Sunday Times article dated 13 October 2013, led me to request Ms Mbeki to remove me from the rendition investigation. I did not tell her about what General Ntlemeza had said, and I only told her that I was not happy with the leaking of information. She informed me that I would have to continue with the investigation of the case
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because there was no one else who could do it, and that "the Minister" would not be happy with me withdrawing from the investigation.

54. I only informed one of the IPID employees whom I trusted about what had happened when General Ntlemeza visited me. After I had sent the first report to Advocate Mosing, General Ntlemeza stopped asking me about the report. The last time I met with General Ntlemeza was on 06 December 2014, again at the Wimpy Cycad Centre. He said that he had just called me to tell me that he had good news and wanted me to meet with him. I arrived at approximately 15h00 with my wife, but she remained in the car. I found General Ntlemeza seated inside. He said that his time to move to the Hawks had arrived and that there was going to be a "*hit on Dramat*". He suggested that I watch the news on TV in the next coming weeks, which I did. What he told me happened exactly as he had said and General Dramat was suspended and removed and General Ntlemeza was appointed as Head of the Hawks.

55. After this, I started to have concerns about the credibility of Colonel Madilonga's evidence concerning General Dramat. These concerns arose for several reasons:

- In the first place, before I interviewed Colonel Madilonga and he told me he had telephoned General Dramat from the border to confirm whether the Zimbabwean Police (who had informed him that they were due to meet with him in South Africa), could enter the country, Colonel Madilonga had signed an un-commissioned statement in which there was no reference to General Dramat at all.

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- In the second place, Colonel Madilonga had tried to explain this discrepancy to me by averring that he had been forced, when signing the first statement, to give false evidence and exclude the reference to General Dramat, and that the first statements was not true. I started to suspect that perhaps it was the second statement referring to General Dramat that was in fact not true. This did not make sense as his first statement had not been commissioned and if he had indeed been pressurised into making it, those who pressurised him would have ensured that it had been properly commissioned.
- Thirdly, I found it strange that Colonel Madilonga had been transferred to Burgersfort and that General Ntlemeza had assured me that he was taking care of his safety and security, and that I should not be worried about him.
- Fourthly, Colonel Madilonga's version did not make sense. The rendition of the Zimbabwean nationals involved the unlawful return of the nationals to Zimbabwe and not their entrance from Zimbabwe into South Africa. What Colonel Madalonga had told me was that the Zimbabwean police has requested permission to enter South Africa in order to meet with General Dramat and he had allegedly telephoned him to gain authority to enter the country. Although General Dramat would not have had any authority to do so, this did not implicate General Dramat in the rendition of the Zimbabwean nationals, back to Zimbabwe.
- Fifthly, it made no sense that Colonel Madilonga would only have been involved in the first operation in which certain of the Zimbabwean nationals were returned to Zimbabwe, but not any of the subsequent operations

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during which the remaining Zimbabwean nationals were deported and handed over to the Zimbabwean police.

- Sixthly, I had sight of a letter from the Zimbabwean authorities thanking the South African authorities for assisting in the rendition of the Zimbabwean nationals which was not addressed to General Dramat, who it was averred had been instrumental in securing the rendition of the Zimbabwean nationals, and was instead addressed to the CI and no mention was made of General Dramat. A copy of this letter is attached, marked Annexure "HIK 5."

56. I thus started to suspect that although General Dramat may have been informed of the intention of the Zimbabwean police to enter the country, he had not in fact been involved in the rendition of the Zimbabwean nationals. I suspected that Colonel Madilonga had been pressurised to link the two events in order to implicate General Dramat in the rendition.
57. Indeed, my investigation of the telephone records indicated that there had been very short call on 4th November 2010 to General Dramat from the border to his cell phone number, but this was prior to the first rendition on 8th November 2010.
58. This was confirmed in affidavits deposed to by Brigadier Joseph Makushu and Colonel Sharon Radzilani, who Colonel Madilonga had said he had contacted to obtain authority to permit the Zimbabwean police to enter the country before he telephoned General Dramat. In their statements they made it clear that it was the authority to enter the country that was sought by Colonel Madilonga from General Dramat, and not the rendition of the Zimbabwean nationals.
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59. Accordingly, I decided to send Colonel Madilonga's statement for analysis by an expert statement examiner, Anna-Mari Van Staden, on or about 4 October 2013. After analysing his affidavit, Ms Van Staden concluded, as confirmed in her email dated 04 October 2013, that: "...this statement is not a truthful reflection of what happened...". This confirmed my suspicion that Colonel Madilonga had been put under pressure to give manufactured evidence, and that Colonel Madilonga was in fact lying. A copy of the email and the analysed affidavit of Colonel Madilonga is attached marked **Annexure "HIK 6."**

60. For completeness, a copy of Anna-Mari Van Staden report is also annexed hereto, marked **Annexure "HIK 7."**

D. The first, amended and second reports

The first report (Submitted to Advocate Mosing)

61. In November and December 2013, Advocate Mosing started pressurizing me to submit both the report and the docket to the NPA. I informed him of the outstanding information, which included obtaining the warning statements of General's Sibiya and General Dramat, as well as the analysis of cell phone records of the above mentioned suspects. Despite the outstanding information, Advocate Mosing instructed me that the docket and the report should be submitted to him.

62. On Advocate Mosing's insistence I then compiled a report dated 22 January 2014 ("**the first report**"). This was essentially a CIG and NPA driven/guided report. Advocates Mosing and Moeletsi, and Colonel Moukangwe had met with me on several occasions previously and they had given me their

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input on the analysis of evidence contained in the docket. They were also adamant on what the recommendation should be. A copy of the first report is attached hereto, marked **Annexure "HIK 8."**

63. The first report was always intended as an interim report and Advocate Mosing and I would always refer to it as such. Furthermore, it did not contain any statement from General Dramat. As stated previously and I wish to reiterate that the recommendations in the first report were based on the then available evidence and the guidance and investigations conducted by Advocate's Mosing and Moeletsi as well as Colonel Moukangwe. It did not contain all the evidence that ultimately formed part of the docket.
64. I informed Advocate's Mosing and Moeletsi and Colonel Moukangwe that the report had to be approved by the IPID Head, as stated in the IPID regulations, as it was a national investigation.
65. At that point in time, Ms Mbeki was no longer coming to the office as she had taken up employment with another Department. When I enquired about Ms Mbeki's availability from Ms Tshiamo Mahibila ("**Ms Mahibila**"), Ms Mbeki's secretary, she informed me that Ms Mbeki would only sign financial documents of the IPID and not investigation related matters. I then signed the report and handed the report to Advocate Mosing without the criminal docket, which was contrary to the IPID regulations. This I did as Advocate Mosing insisted that I sign the report and hand it to him.
66. In that report the recommendations made by me were as follows:

"RECOMMENDATION

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Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya (provided his warning statement is submitted, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for:

- *Kidnapping*
- *Defeating the ends of justice*
- *Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)".*

The amended report (submitted to Mr Sesoko)

67. Subsequent to signing the first report and before reporting to Mr Sesoko, I telephoned the expert analysing the cell phone records of the suspects and was told that General Sibiya would have to be ruled out as a suspect as his cell phone records indicated that he was in Pretoria, and not in Fourways where the alleged meeting between the Zimbabwean Police, CI and General Sibya took place on 05 November 2010 as alleged by the witnesses.
68. The expert further informed me that he had finished plotting calls on a google map, which indicated that General Sibiya was not in Diepsloot, where the Zimbabwean nationals had stated they were assaulted by General Sibiya.
69. I accordingly amended the recommendation made by me in my first report that General Sibiya be criminally charged.
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70. As Ms Mbeki was no longer there to report to, I sent my interim report to Mr Sesoko on 23 January 2014, via email in order for Mr Sesoko to dispatch the report to the Secretariat of Police. The email and the report is annexed hereto marked **Annexure "HIK 9."**

71. In my amended report, I excluded General Sibiya as a suspect. The recommendations now read:

"RECOMMENDATION

Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally of (sic):

- *Kidnapping*
- *Defeating the ends of justice*
- *Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi".*

(The Independent Police Investigative Directorate cannot recommend any criminal charge against Major General Sibiya because the witnesses versions are not corroborated by other evidence that he was at the crime scene, e.g. cellphone records).

72. On 26 February 2014, General Sibiya responded to the questions which I had previously sent to him. The reply was sent via Ms Mahibila who forwarded it to

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Mr Sesoko on 27 February 2014. On 27 February 2014 Mr Sesoko forwarded the email on to me and on the following day, I submitted Mr Sibiya's response via email to Advocate Mosing. On 28 February 2014, Advocate Mosing responded via email as follows:

"Dear Mr Khuba, in light of the fact that the matter has been referred to the DPP of South Gauteng for decision, you are requested to file this evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or other matter directly with him. Kind Regards.

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73. A copy of this email is attached hereto, marked **Annexure "HIK 10."**
74. I understood from this email that there was a need for me to collect the docket from DDP of South Gauteng and update it with new evidence.

The second report (submitted to Mr Nxasana, the NDPP)

75. On 03 March 2014 Mr Robert McBride ("**Mr McBride**") joined the IPID and was appointed Executive Director. On 05 March 2014, I briefed Mr McBride on the rendition case as he had requested to be briefed on all high profile cases in the Department. I informed him of the challenges encountered during the investigation of the case, including whom I was instructed to collaborate with, who I had to exclude and who had 'guided' the investigation.
76. On 06 March 2014, I again met with Mr Sesoko and Mr McBride to complete my briefing of the rendition case. I informed Mr McBride of the email dated 28 February 2014 regarding the new evidence obtained and that I would need to

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collect the docket from DDP at South Gauteng in order to update the docket. This new evidence comprised the report on the analysis of Colonel Madilonga's statement, the report on the cell phone records and Google mapping, the warning statement of General Sibiya as well as his responses to the questions I had sent him.

77. Mr McBride permitted me to collect the docket which I did on 07 March 2014, I went with Mr Glen Angus to collect the docket from Advocate van Zyl at the South Gauteng Directorate of Public Prosecutions ("DPP") offices. We signed for the docket and left with the 6 lever arch files and one thin file. A copy of the document on which we acknowledged receipt of the case docket is on an internal memorandum from Advocate Mosing to Advocate Chauke, dated 14 February 2014 and is the memo on which Advocate Mosing forwarded the docket to the DPP South Gauteng. A copy of this document is attached marked **Annexure "HIK 11."**
78. After collecting the docket, I perused it and noted that it did not contain the first report which I had submitted to Advocate Mosing. Instead, the docket only contained the report compiled by Advocate Mosing. In fact, the investigation journal made no reference to Advocate Mosing having received my first report.
79. After taking possession of the docket I proceeded to the IPID offices in Pretoria where I discussed the evidence in the docket with Mr Sesoko. I assessed the evidential value of assertions made in the docket. I did not review the report but evaluated the existing evidence in the docket, updated the docket and completed my final report in which I recommended that no charges be brought against Generals Sibiya or Dramat as they could not be supported by the available

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evidence. This is what has been referred to as **"the second report"**, dated 18 March 2014.

80. I signed the report and handed it to Mr Sesoko, to counter sign. It was also approved and signed by Mr McBride as required by regulation 5 of IPID Regulations, under Act no 1 of 2011. Mr McBride then handed the report and docket to the NPA. A copy of the report is attached hereto marked **Annexure "HIK 12."**

The final recommendations was as follows:

8. "RECOMMENDATION"

Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard to Lt Col M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.

81. Shortly before Mr McBride's suspension in March 2015, I received a number of calls from the then Minister of Police, Minister Nathi Nhleko's personal assistant who did not disclose her name, save to say she was his personal assistant. She informed me that Minister Nhleko wanted to see me. I informed her that I required permission from the Executive Director at IPID, Mr McBride, before I could do so. She phoned again and told me that Minister Nhleko wanted me to fly to Cape Town over the weekend and that he would cover the cost. I told her that it would make no difference whether the meeting took place during office hours or over

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the weekend because, as long as the meeting related to IPID business, the Executive Director had to know about it.

82. On the following day, Minister Nhleko phoned me and told me to co-operate with Werksman's Attorney's ("**Werksmans**") regarding the January and March 2014 reports.

E. Werksmans

83. I was later requested by Mr Israel Kgamanyane ("**Mr Kgamanyane**") who had now been appointed the acting Executive Director at IPID after the suspension of Mr McBride, to go to 'Duma Nokwe Chambers' at Sandton in Johannesburg to meet Advocate William Mokhari SC ("**Mokhari**"). In the morning I attended at Werksmans chambers as instructed. Advocate Mokhari requested me to make a confirmatory affidavit in support of the Minister (Minister Nhleko) in a departmental case against Mr McBride. I refused and told him that if I deposed to the confirmatory affidavit in support of the Minister, I would be lying. He then excused me, telling me that I could go back to my office at IPID. Our meeting lasted less than three minutes.
84. I was also called to three interviews at Werksmans regarding the existence of the two reports prepared by me referred to above. At the commencement of these interviews with Werksmans, I was assured that the information gathered would not be used against me, either in a departmental or criminal investigation. However, this was not the case as I was later suspended and charged based on the recommendations made by Werksmans in the report compiled by Sandile July, dated 24 April 2015. A copy of the Werksmans report is attached hereto, marked **Annexure "HIK 13."**

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85. In so far as it concerns myself, Mr McBride and Mr Sesoko, Werksmans found as follows:

"6.4.5 In the absence of any information as to which of the three co-signatories were responsible for the deletion of information from the First Report, we recommend that Khuba, McBride and Sesoko be charged criminally for defeating the ends of justice or obstructing the administration of justice, and that disciplinary charges be brought against them in their capacity as employees".

86. This recommendation was completely unfounded. As I have explained above, I omitted the reference to Mr Moyo's previous arrest with the assistance of the Zimbabwean police and what the Easter Cape police officer had told me from my final report as my subsequent investigations and evidence obtained proved these aspects to be no longer relevant. I amended my recommendation initially made in the first report that Generals Sibiya and Dramat be charged as the subsequent evidence I had obtained did not support the witnesses evidence against them. I did not in any way delete or remove information from the first report which remained unchanged.

F. Reference Group

87. Around November 2014, Mr Sesoko, Mr McBride and I had a meeting with the Reference Group appointed by the Minister to advise him on policing matters. One of the members of the Reference Group was Advocate Raymond Mathenjwa from NPA. Few days after the meeting, Advocate Mathenjwa called me and demanded copies of the rendition docket. I refused and referred him to McBride.

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G. Suspension of myself and other IPID members

88. Mr McBride was suspended in March 2015 for his 'role' in the 'conflicting' reports. On 21 May 2015 I received a letter of precautionary suspension signed by Mr Kgamanyane. The letter was served on me by Ms Netsianda, Chief Director Corporate Services. She telephoned me to inform me that the Minister (Nhleko) wanted me to receive the suspension letter on that same day and she drove all the way from Pretoria to Polokwane (some 300 km) where I was, in order to serve the letter on me. The call between Ms Netsianda and myself was recorded and later transcribed. A copy of the transcription is annexed hereto and marked **Annexure "HIK 14."**
89. The letter of my suspension is attached hereto, marked **Annexure "MN 15."**
90. On 3 May 2016 Ms Netsianda deposed to a confirmatory affidavit which was obtained and filed in the record of my disciplinary hearing. This affidavit serves to confirm the correctness of the information contained in the transcriptions and is filed as **Annexure "HIK 16."**
91. On 19 June 2015 I deposed to a supporting affidavit in the High Court in the matter between Mr McBride (Applicant) and the Minister of Police (First Respondent) and Minister for Public Service and Administration (Second Respondent), under case number 6588/15. A copy of supporting affidavit is attached hereto, marked **Annexure "HIK 17."**
92. On 7 July 2015, I was served with a Notice to Attend a Disciplinary Enquiry signed by Mr Kgamanyane. In the letter is stated that he has appointed Advocate William Mokhari SC, (**Advocate Mokhari SC**), together with Advocate

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Thembeke Ngcukaitobi and Hogan Lovells Attorneys, as initiators and pro forma prosecutors. Advocate Patrick Ngutshana was appointed as the independent Chairperson. A copy of the Notice is attached hereto, marked **Annexure "HIK 18."**

93. The disciplinary hearing was scheduled for 17 July 2015 but, on the same day, it was postponed and finally set down for 13, 14 and 17 August 2015. IPID's employer representative was the same Advocate Mokhari SC who requested me to make a confirmatory affidavit in support of the Minister just a month or two earlier. An application was made for the suspension of the hearing pending the outcome of the Constitutional Court application brought by Mr McBride as to whether or not the Minister was allowed to institute disciplinary proceedings against members of IPID, who were supposed to be independent. The Chairperson ultimately dismissed our application, and a new date was set for 23 September 2015.
94. On the set date, Mr Sesoko was admitted in hospital. IPID's legal representative, Advocate Mokhari SC, then approached my attorney to propose that the disciplinary proceedings against me be separated from those against Mr McBride and suggested that a settlement agreement be entered into between IPID and me. IPID's legal representative informed mine that I would be given a final written warning, but if I persisted in having a full hearing, I would be dismissed.
95. Having been given no choice, I accepted IPID's offer on 23 September 2015 and signed the settlement agreement. I intended to avoid a predetermined outcome of the hearing even before my evidence was heard, and to avoid a protracted

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process. A copy of the settlement agreement is attached hereto, marked **Annexure "HIK 19."**

96. IPID's lawyer, Advocate Mokhari SC, had sought to persuade me to sign an affidavit averring that Mr McBride and Mr Sesoko had forced me to change the recommendation I made against General's Sibiya and Dramat, in my first report but I refused to do so as it was not true.
97. After signing the settlement agreement, I visited Mr Sesoko in hospital and told him what had transpired. However, hereafter Mr Sesoko was told that I had implicated both him and Mr McBride, which was not true.
98. On 25 September 2015, Mr Sesoko called me to ask me if it was true that I had falsely implicated him in the settlement agreement, which I denied. In order to allay his fears, I drafted an affidavit dated 25 September 2015 in support of the Disciplinary Enquiry between IPID and Mr Sesoko, denying that I had implicated him. A copy of my affidavit is attached hereto, marked **Annexure "HIK 20."** I furthermore informed Mr Sesoko that I would be willing to give evidence in support at his upcoming disciplinary hearing.
99. Mr Kgamanyane, the Acting Executive Director of IPID, got wind of the fact that I had deposed to an affidavit in support of Mr Sesoko. When I presented myself to work on 28 September 2015, I received a call from Mr Kgamanyane who wanted to know why I had deposed to an affidavit supporting Mr Sesoko. I told him that I did so as it was the truth.
100. The next day, on 29 September 2015, I received a letter from Mr Kgamanyane, at my work place in Limpopo, asking me to set out why he should not replace

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the final written warning, agreed to in my settlement agreement, with a dismissal.

A copy of this letter is attached hereto, marked **Annexure "HIK 21."**

101. On 30 September 2015, I responded to Mr Kgamanyanes' letter, stating that there was nothing contained in the settlement agreement precluding my deposing to an affidavit in support of Mr Sesoko and that there were no terms and conditions attached to the settlement agreement. I reminded him that the settlement agreement signed by IPID was binding and that IPID was not entitled to renege on that agreement and replace the sanction of a final warning with a dismissal. I indicated that to do so constituted the repudiation of the settlement agreement and I accordingly intended to approach the High Court to set aside the settlement agreement and continue with my disciplinary hearing. A copy of this letter is annexed and marked as **Annexure "HIK 22."**

102. I was however dismissed that afternoon. A copy of my letter of dismissal is attached, marked **Annexure "HIK 23."** I might add that this letter of dismissal was also hand delivered to me at Limpopo by an employee of IPID from Gauteng who must have already left Pretoria to deliver the letter to me before I had dispatched my response to Mr Kgamanyane. Mr Kgamanyane, accordingly, dismissed me without any regard to the representations made by me.

H. Interference of Brigadier Rammela and Colonel Mahlangu

103. On 03 October 2015, 3 days after my dismissal, Brigadier Rammela and Colonel Mahlangu of the Hawks visited me at my home where they requested me to make a witness statement implicating Mr McBride and Mr Sesoko. In return, they offered to reinstate me to my former position within IPID. They looked around my house and told me to think about the implication of being unemployed and having

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to pay for my house bond, cars and school fees. They also showed me a case docket against me reflecting a charge of perjury registered under Pretoria Central CAS 5424/05/2015. Despite this, I informed Colonel Mahlangu and Brigadier Rammela that I would not falsely implicate Mr McBride and Mr Sesoko.

104. Colonel Mahlangu later phoned me again urging me to make a statement against Mr Sesoko and McBride and insisted that I would be reinstated in my position if I did so. I recorded the telephonic conversation between Colonel Mahlangu and me, which I later had transcribed. A copy of the transcribed recording is annexed hereto, marked **Annexure "HIK 24."**

I. The Labour Court application

105. On 7 October 2015, I brought an urgent application in the Labour Court under case number J2031/15 against IPID. A copy of the Notice of Motion and my founding affidavit is attached hereto, marked **Annexure "HIK 25."**

106. The Labour Court ultimately found that my dismissal was unfair and I was subsequently reinstated as a Provincial Head: Limpopo, on 25 April 2017.

J. Changes in the charges against me

107. On Wednesday of 24 February 2016 at about 18h45 I was at home when three males arrived and introduced themselves as members of the DPCI (Hawks) based in Pretoria. They introduced themselves as Brigadier N Xaba ("**Brigadier Xaba**"), Lieutenant-Colonel W Maluleke ("**Colonel Maluleke**") and Captain Sewele ("**Captain Sewele**"). Brigadier N Xaba was the main speaker of the group and he informed me that the purpose of their visit was to obtain a warning



statement from me in connection with a case of defeating the ends of justice and fraud where I was the suspect.

108. According to Brigadier Xaba, these charges arose from the two conflicting recommendation reports made in rendition case which I understood to be Diepsloot CAS 390/07/2012. I was provided with the case number for defeating the ends of justice and fraud case which is registered under Pretoria Central CAS 2454/05/2015, which I knew to be a perjury case against me, referred to by me in my founding affidavit to the Labour Court (Case No J2031/15), page 18 and paragraph 71.

109. I remembered that it was the same case which Brigadier Rammela and Colonel Mahlangu of the DPCI showed me on 3 October 2015 when they requested me to make a witness statement implicating Mr McBride and Mr Sesoko in exchange for me to be reinstated after my dismissal.

110. It thus appeared that the charges against me had been altered from perjury to defeating the ends of justice and fraud.

K. My arrest

111. On 16 March 2016 I was arrested and criminally charged alongside Mr McBride and Mr Sesoko for fraud and defeating the ends of justice, and not perjury. A copy of the charge sheet, under court case number A16/212/2016, as attached as **Annexure "HIK 26."**

112. Before being charged I submitted my warning statement dated 3 March 2016. A copy of my warning statement is attached hereto marked **Annexure "HIK 27."**

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113. I was released on bail in the amount of R1500 and my passport was confiscated.

After a further 3 court appearances, the case was withdrawn on 01 November 2016.

114. The criminal case against us was investigated by a unit in the Hawks which ordinarily is supposed to investigate serious cases against the state like terrorism and treason. I have no idea of the sinister motives behind the investigation, our arrest and prosecution by a team of such calibre, only to have the matter thrown out of the court.

115. On 16 August 2016 Advocate Mxolisi Zondo presided over the Disciplinary Enquiry of Mr Sesoko, in his absence (as he was still admitted to hospital) where Advocate Zondo found Mr Sesoko guilty of misconduct and thereafter issued a sanction of dismissal with immediate effect. A copy of his written reasons for his ruling is attached hereto, marked **Annexure "HIK 28."**

116. It was readily apparent that a decision had been taken to fire both Mr Sesoko and me, no matter what.

L. Conclusion

117. The scheme of event outlined by me above indicate that there was an orchestrated scheme implemented in order to justify the removal of McBride from IPID and Generals Sibiya and Dramat from the Hawks, to facilitate the appointment of General Ntlemeza to his position as Head of the Hawks. I was targeted because I refused to co-operate in the implementation of this scheme.

118. What my family and I were subjected to throughout this entire ordeal was a very painful and unwarranted experience. I was hounded, an attempt was made to

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corrupt me and I was arrested and incarcerated. I am an experienced, fair and dedicated investigator with strong integrity and values. My good name and reputation was tarnished and in the people in the village in which I grew up heard that I had been charged with fraud, it was immediately assumed that I had been involved in corruption. My mother was victimised and accused of having acquired the house I built for her by corrupt means.

119. It has been extremely difficult for me to rebuild my career and repair my reputation.

120. Despite having been asked by a member of CI whether I intended to testify at The Commission of Inquiry into State Capture, I have felt duty bound to do so.

I know and understand the contents of this statement.

I have no objection on taking the prescribed Oath.

I consider the prescribed Oath to be binding on my conscience, so help me God.



HUMBULANI INNOCENT KHUBA

The Deponent has acknowledged that he knows and understands the contents of this affidavit, which was sworn to before me and the deponent's signature was placed thereon in my presence at Johannesburg on this the 16 day of July 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.



Samuel Madumela Mabome

COMMISSIONER OF OATHS

FULL NAMES:

Samuel Madumela Mabome

DESIGNATION:

137 Pretorius Street

ADDRESS:

Pretoria Central SAPS



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Matthews Sesoko

From: IKhuba@ipid.gov.za
Sent: Tuesday, April 30, 2013 3:21 PM
To: MSesoko@ipid.gov.za
Subject: Fw: Report on rendition and Investigation Plan
Attachments: INVESTIGATIVE PLAN FOR DIEPSLOOT CAS 390.docx; RENDITION CASE.docx

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2013/04/30 03:20 PM -----

From: Innocent Khuba/Limpopo/IPID
To: Koekie Mbeki/HeadOffice/IPID
Date: 2013/04/22 10:22 PM
Subject: Report on rendition and Investigation Plan

Good Evening ED.

Attached please find a progress report on the investigation of Diepsloot CAS 390/07/2012 and the Investigation Plan of the same case. Boss, I strongly apologize for inconvenience caused, I thought you were in the office on Friday when I sent Weekly Workplan about the same trip. I never meant to undermine your authority. I had a meeting with the Advocates last week and I attended the meeting after you telephonically granted me permission. They told us to finalise all 205's and other investigations this week.

I humbly request that you allow me to do the 205's tomorrow and submit them to Mariaan. I will do private accommodation and if trip is not approved, I won't submit claim for it. I am very apologetic once more Boss. Sorry for such inconvenience when you have important issues to deal with. Since the investigation has reached such a critical stage, every time when I send my weekly work plan I will attach a one pager progress report for update.

(See attached file: INVESTIGATIVE PLAN FOR DIEPSLOOT CAS 390.docx)(See attached file: RENDITION CASE.docx)

Kind Regards

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**Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA**

INVESTIGATIVE PLAN FOR DIEPSLOOT CAS 390/07/2012

SUMMARY OF ALLEGATIONS: It is alleged that on 2010/11/05 Captain M L Maluleke and Warrant Officer Makwe through the direction of the General Sibiya, conducted an operation in Soweto to trace Zimbabwean foreigner nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by two Zimbabwean police officers. Four Zimbabwean were arrested in Diepsloot and detained at Orlando police station as illegal immigrants. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean authorities and one of them was allegedly murdered in Zimbabwe by the Zimbabwean Police.

LEGAL MANDATE OF THE IPID: Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. The Independent Police Investigative Directorate (IPID) decided to investigate this matter in terms of section 28(1) (f) and 28(1) (h).

THE CASE LIFE SPAN SINCE REGISTRATION AND CHALLENGES: The case was register in July 2012 at Etwatwa and later transferred to Diepsloot police station bearing CAS 390/07/2012. Since registration, the case has already spent six months still under investigation. The challenge has been slow response from other institutions to provide us with information. It took three month for the Department of Home Affairs to comply with our request.

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THE PROJECT PLAN FOR OUTSTANDING INVESTIGATIONS					
TYPE OF INVESTIGATION	INFORMATION SOURCES AND LOCATION	PURPOSE	TIME FRAMES	DATE COMPLETED/ EXPECTED DATE OF TASK COMPLETION	
<p><u>Witness statements: Victims, eye witnesses and members involved in the operation.</u></p> <p>Interview and obtaining of statements from members of the Public who witnessed the arrest and assault of the Zimbabwean Foreign Nationals on 2010/11/05. A total number of 13 statements were obtained which form basis of the charge of assault and kidnapping.</p>	<p>Members of Crime Intelligence involved in the operation were interviewed and statements were obtained. Relatives of the victims were interviewed and statements obtained.</p>	<p><i>First Information of crime and suspects identification.</i></p>	<p>3 months</p>	<p>The task was completed in October 2012</p>	
<p><u>Witness statements and documentary evidence: Home Affairs.</u></p> <p>Interview and obtaining of statements of Home Affairs officials and verification of documents produced by members of SAPS as valid deportation papers. A total number of 7 statements were obtained and various documents and reports were provided.</p>	<p>Statement of the management of Home Affairs, Lindela Holding facility, SARS computerised information.</p>	<p><i>Verification of the authenticity of the documents produced by the SAPS. Verification of the DZP and number of Zimbabwean foreign Nationals during the period.</i></p>	<p>4 months</p>	<p>The task was started in November 2012 and the information was only supplied in February 2013.</p>	
<p><u>Witness statements and Documentary evidence: Orlando Police station.</u></p>					

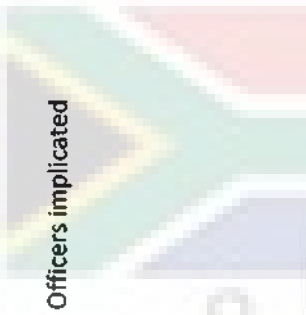
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Interviewed and obtained statements of members who were on duty on the day in which the Zimbabwean Nationals were detained and also booked out for deportation. A total number of 5 statements were obtained and documentary proof also provided.	Orlando police station and officers who were on duty between 05 th and 8 th November 2010	Verification of the detention of the Zimbabwean foreign Nationals and processes.	2 months	The task was started in December and completed in January 2013
<u>Investigation on new leads based on information at hand.</u> Investigation of deportation processes at Beit Bridge	Beit Bridge	Evidence to support the coming in of Zimbabwean police.	1 month	Task completed end of March 2013
Interview and obtain statement of a key witness involved in the operation at Beit Bridge and other witnesses who corroborate him.	Beit Bridge and Polokwane Protection and Security services	Corroboration	5 days	The Task was completed on 17/04/2013
<u>Application of section 205 in respect of the telephone records of the following individuals.</u> General Dramat General Sibiya Captain Maluleke Warrant officer Makwe Warrant Officer Radebe Colonel Madilonga	VODACOM MTN CELL	To check the content of the SMS for Corroboration, location and individuals called	10 Days	The task will be completed 02/05/2013
<u>Home Affairs Pretoria</u> The print out of all the record of entry and exit of foreign nationals who used official passports between 20/10/2010 and 09/11/2010.	SARS and Department of Home Affairs in Pretoria, Mr Ndlovu.	Corroboration	Two weeks	The information will be submitted on

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<u>Zimbabwe</u>				2013/04/26
The death certificate and the Inquest report of deceased Witness Ndeya (There is an official who is dealing with the information).	The family of the deceased and the Ministry of internal affairs in Zimbabwe		<i>Corroboration</i>	N/A
Report on renditions submitted by South African Police Services and the Department of Home Affairs to Parliament.				Reports obtained
AVL of the vehicles assigned to TOMS and Gauteng Hawks in 2010	Hawks		<i>Corroboration</i>	10 days
<u>Warning statements of the following Individuals;</u> General Dramat General Sibiya Captain Maluleke Warrant officer Makwe Warrant Officer Radebe	 Officers implicated		<i>Response to the charges</i>	10 days
				03/05/2013

The case will be completed before 10/05/2013 and the team is responding with speed to any new information and guidelines provided by the two advocates who are working with the team.

I H KHUBA

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Matthews Sesoko

From: IKhuba@ipid.gov.za
Sent: Tuesday, April 22, 2014 3:22 PM
To: MSesoko@ipid.gov.za
Subject: Fw: Investigation of Renditions next week

— Forwarded by Innocent Khuba/Limpopo/IPID on 2014/04/22 03:21 PM —

From: "Anthony Mosing (A)" <amosing@npa.gov.za>
To: "kmbeki@ipid.gov.za" <kmbeki@ipid.gov.za>, "IKhuba@ipid.gov.za" <IKhuba@ipid.gov.za>
Date: 2013/07/05 12:44 PM
Subject: FW: Investigation of Renditions next week

Dear Ms Mbeki, I confirm that I met with Mr Khuba this week where we discussed progress of this matter. I am instructed by my principal to draw up the charge sheets and am in the process to do so. There are however certain investigations discussed with Khuba that requires speedy attention. The plan is to wrap up this investigation without delay and we agreed that he devote the whole of next week for this purpose. It is not possible to complete the charge sheet when there are issues outstanding. I trust that you will give him the necessary permissions and support to finalise this. Especially now that very important new statements were obtained this week. I trust that you will find this in order. Kind regards.

A MOSING
HEAD: SPECIAL PROJECTS DIVISION
OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
NATIONAL PROSECUTING AUTHORITY
REPUBLIC OF SOUTH AFRICA

TEL: +27 128456366
MOBILE: +27 847388076

From: IKhuba@ipid.gov.za [<mailto:IKhuba@ipid.gov.za>]
Sent: 05 July 2013 12:24 PM
To: Anthony Mosing (A)
Subject: Investigation of Renditions next week

Good day Advocate.

I humbly request that you forward an e-mail to my Boss requesting me to finalise the investigation next week as discussed during the meeting. I have done the weekly work plan and sent it to her about investigations for the entire week. may you just confirm to her through e-mail.

Kind Regards

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Interview with General Dramat - Message (HTML)

Message

Ignore X
Go Junk - Delete Reply Reply Forward More

Create New

Rules

Move
Quarantine
Mark
Archive
Unread

Related
Select

Copy

From: **IKhuba@ipid.gov.za**
To: **forw@ipid.gov.za**
Cc: **D.Motokane@ipid.gov.za**
Subject: **Interview with General Dramat**

Sent: Monday, 02 October 2012 10:47 AM

With reference to my response to Adv Mosing, on 02/10/2013 we will be meeting with Adv Mosing in an attempt to draft questions for the purpose of interview with both General Dramat and Lt Col Maluleke. I humbly request the services of Mr Sesoko during the meeting. I have already discussed the issue with my supervisor Mr Motokane and I will be back in the office on 2013/10/03.

Kind Regards

I H KHUBA

Handwritten signature

Handwritten initials



IKhuba@ipid.gov.za

HIK-047





ipid

Department
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9525, Polokwane, 0700, 66 A Market Street, Fernic Building, 2nd Floor, Polokwane
Tel: (015) 291 9800 Fax: (015) 295 3409

Enq: I H Khuba
Date: 2013/10/30

TO: ACTING EXECUTIVE DIRECTOR
MS K. MBEKI

FROM: INNOCENT H KHUBA
DIRECTOR- INVESTIGATIONS

DATE: 30 OCTOBER 2013

SUBJECT: THE LEAKAGE OF DIEPSLOOT CAS 390/07/2013 INFORMATION IN THE
SUNDAY TIMES NEWSPAPER.

The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation. Upon referral of the case to the Directorate, I was appointed as the Head of the Task Team to investigate the allegation. I then received a docket from Mr M Sesoko who was the acting Head of Investigations and Information management programme. I appointed the Task Team members from my office comprised of Mr D Mokoena, Mr K Ratshitali, Mr N Mulaudzi, Mr M Maphetho and Mr T Mashaphu.

During our investigation we provided various progress reports on the matter for the purpose of updating the stakeholders and your office on the development of the case. I was surprised to see the details about our investigation on the Sunday Times Newspaper. The details of the leaked information included the name of a key witness Lt Col Madilonga. The leakage had serious impact on the case including the safety of witnesses. Such leakage had also cast cloud of doubt over my integrity as the Head of the Task Team.

I therefore request a full investigation in the leakage of information which will include but not limited to submission of sworn statements and being subjected to polygraph test of all team members including me.

I will engage SCM on sourcing of quotations for polygraph testing as soon as your approval is received.

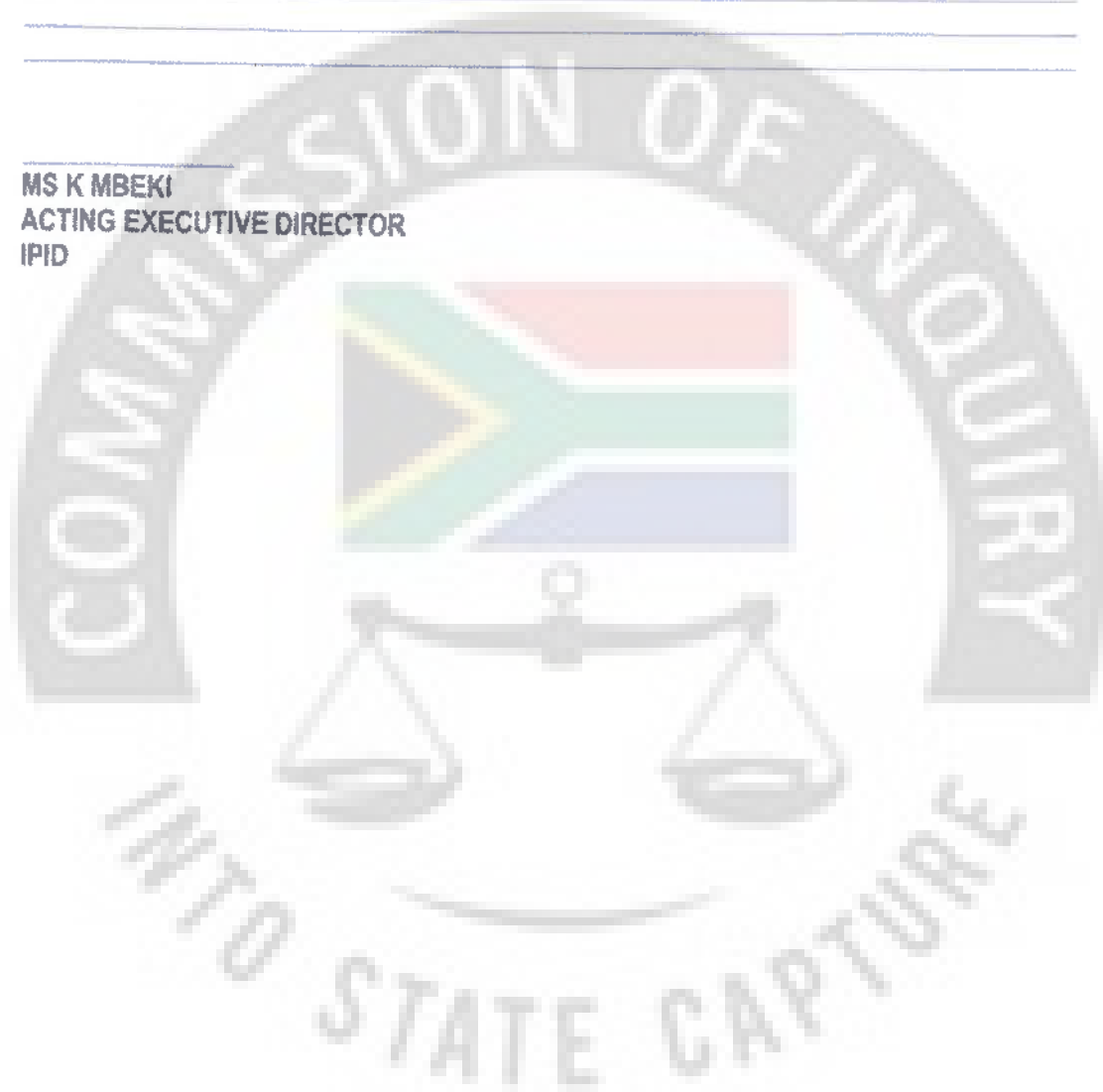
Hoping that the above is in order

M.S. *HJ*

[Signature]
Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

Approved/ Disapproved

MS K MBEKI
ACTING EXECUTIVE DIRECTOR
IPID



MS

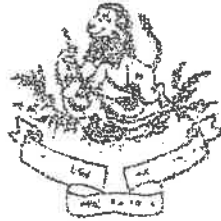
HI

5



ANNEXURE "A" (1)

ZIMBABWE REPUBLIC POLICE



Official Communications
Should not be addressed
To individuals

C.I.D PROVINCIAL HEADQUARTERS
P.O. BOX 583
BULAWAYO
ZIMBABWE

Telegrams 'CO-ORDINATOR
C.I.D BYO, MAT NORTH AND
SOUTH PROVINCES.'

Telephone BULAWAYO 62070 or 72515 Ext: 2169

Fax: (263)-(09)-62070

14TH March, 2011

Commander Criminal Investigations Unit
South Africa Police Service

PRETORIA

Attention: Colonel Ntendeni

Dear Sir

**Re: LETTER OF APPRECIATION OF GOOD WORK PERFORMED BY
YOUR INTELLIGENCE OFFICERS:**

- 1) CONSTABLE P.F MGWENYA NUMBER 7110232-9**
- 2) CONSTABLE P.R MOKGOBU NUMBER 2117679-5**
- 3) CONSTABLE M RIKHOTSO NUMBER 7109683-3**
- 4) CONSTABLE E.D MKASIBE NUMBER 0537881-8**

I wish to express my profound gratitude in the exemplary, professionalism, brevity and dedication to duty that was exhibited by your above mentioned operatives.

Our Criminal Investigation Department Bulawayo was investigating a case of Murder involving a senior police officer of the Zimbabwe Republic Police, the late Chief Superintendent **CHATIKOBO** who was killed in Bulawayo on the 18th September, 2010 by the accused **GORDON DUBE, JOHANNES NYONI** and three others. Soon after committing the offence, the two mentioned accused persons fled Zimbabwe and sought refuge in Diepsloot squatter camp, Johannesburg in the Republic of South Africa.

We passed on information to the above mentioned officers regarding the two accused persons who reacted swiftly, managed to arrest the two fugitives and recovered a CZ pistol that was taken from the deceased Police Officer in Zimbabwe.

M.S. A1

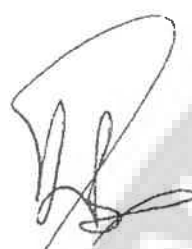
ANNEXURE "A" (2)

During the period 21st February to 1st March 2011, the same team assisted me and my team when I was conducting some investigations in the Republic of South Africa. I really enjoyed the manner and fashion the above mentioned officers aligned themselves to police work despite being junior officers.

May your respected office convey my appreciation to all of them.

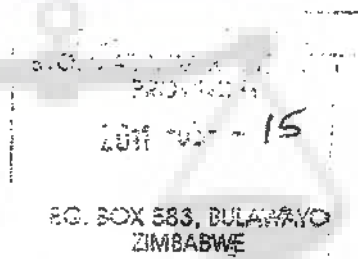
I also wish to thank you and Captain **Busang** for the support rendered to me and my team during the visit.

Best Regards



[E. MAKODZA] Assistant Commissioner
CID Coordinator

BULAWAYO, MATABELELAND NORTH & SOUTH PROVINCES



m-s AA1

ANNEXURE "B"

SAP 21

SUID-AFRIKAANSE POLISIEDIENS

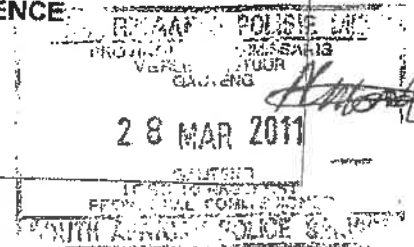


SOUTH AFRICAN POLICE SERVICE

Private Bag X20, Johannesburg, 2000

Verwysing Reference	12/2/3/154	THE PROVINCIAL HEAD CRIME INTELLIGENCE GAUTENG 2011-03-24
Navrae Enquiries	Brig. Britz	
Telefoon Telephone	(011) 373-3394	
Faksnommer Fax number	(011) 373-3450	

The Provincial Commissioner
 SA Police Service
 GAUTENG



COMMENDATION FOR GOOD WORK PERFORMED BY MEMBERS OF CRIME INTELLIGENCE

1. Attached herewith a minute dated 2011-03-14 from CID Provincial Head Quarters, Bulawayo, Zimbabwe for your information.
2. The members involved are stationed at Pretoria Central Crime Intelligence Station.
3. It would be appreciated if the members can be called to your office to congratulate them for the good work that was done.

RA TOKA

MAJOR GENERAL
 PROVINCIAL HEAD
 CRIME INTELLIGENCE
 GAUTENG

Received
 for SA H&K Tender
 2011-04-06

Nasena,
 As open file.

Moibobu CAP9

2011-04-20

MS

HH

ANNEXURE "C"

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
 Posbus / Post Office Box

Verwysing Reference	7109683-3/6A
Navrae Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
 SOUTH AFRICAN POLICE SERVICE
 GAUTENG

31 May 2011

- A. THE PROVINCIAL HEAD
 CRIME INTELLIGENCE
 GAUTENG
- B. The Station Commander
 South African Police Service
 PRETORIA CENTRAL

AFRICAN POLICE SERVICE
 SECTION COMMANDER
 ADMINISTRATION

2011-07-15

CRIME INTELLIGENCE
 GAUTENG

SUID-AFRIKAANSE POLISIEDIENS

LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG

APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
 ZIMBABWEAN POLICE CHIEF.

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- ▶ 7109683-3 Constable M Rikhotso
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,


 PROVINCIAL COMMISSIONER: GAUTENG
 M PETROS

LIEUTENANT GENERAL
 PROVINCIAL COMMISSIONER: GAUTENG

M/S

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ANNEXURE "D"
SAP 21

SUID-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
Posbus / Post Office Box

Verwysing Reference	7110232-9/6A
Navrae Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
GAUTENG

31 May 2011

SOUTH AFRICAN POLICE SERVICE
SECTION COMMANDER
ADMINISTRATION

2011-07-15

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

**LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG
APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
ZIMBABWEAN POLICE CHIEF.**

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- 7110232-9 Constable PF Mgwenya
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS

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ANNEXURE "E"
SAP 21

SU, J-AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
Posbus / Post Office Box

Verwysing Reference	2117679-5/6A
Navrae Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
GAUTENG

31 May 2011

AFRICAN POLICE SERVICE
SECTION COMMANDER
ADMINISTRATION

2011-07-15

CRIME INTELLIGENCE
SECTION

PRETORIA CENTRAL

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

**LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG
APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
ZIMBABWEAN POLICE CHIEF.**

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- ▶ 2117679-5 Constable PR Mokgobu
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

Kind Regards,

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS

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ANNEXURE "F"
SAP 21

SU -AFRIKAANSE POLISIEDIENS



SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X57
Posbus / Post Office-Box

Verwysing Reference	0537881-8/6A
Navrae Enquiries	Prov Comm Petros Colonel Stoltz
Telefoon Telephone	011 2747402
Faksnommer Fax number	011 2747312

OFFICE OF THE PROVINCIAL COMMISSIONER
SOUTH AFRICAN POLICE SERVICE
GAUTENG

31 May 2011

AFRICAN POLICE SERVICE
SECTION COMMANDER
ADMINISTRATION

2011-07-15

CRIME INTELLIGENCE
GAUTENG

SUID-AFRIKAANSE POLISIEDIENS

- A. THE PROVINCIAL HEAD
CRIME INTELLIGENCE
GAUTENG
- B. The Station Commander
South African Police Service
PRETORIA CENTRAL

**LETTER OF APPRECIATION: EMPLOYEES OF PRETORIA CENTRAL CIG
APPREHENDING WANTED CRIMINALS WHO FLED FROM ZIMBABWE AFTER MURDERING
ZIMBABWEAN POLICE CHIEF.**

- A1. Your 12/2/3/154 dated 2011-03-24 refers.
- B1. It gives me great pleasure to express my sincere thanks and appreciation to the following member for the excellent services rendered:
- ▶ 0537881-8 Constable ED Mkasibe
2. It is gratifying to know that the South African Police Service has a member of such excellent calibre in our midst.
3. The employee is encouraged to continue to dedicate his energy towards enhancing the image of the South African Police Service and to deliver quality service at all times.
4. It would be appreciated if the contents of this letter could be brought to the attention of the employee concerned and a copy of this letter is placed on his personal file.

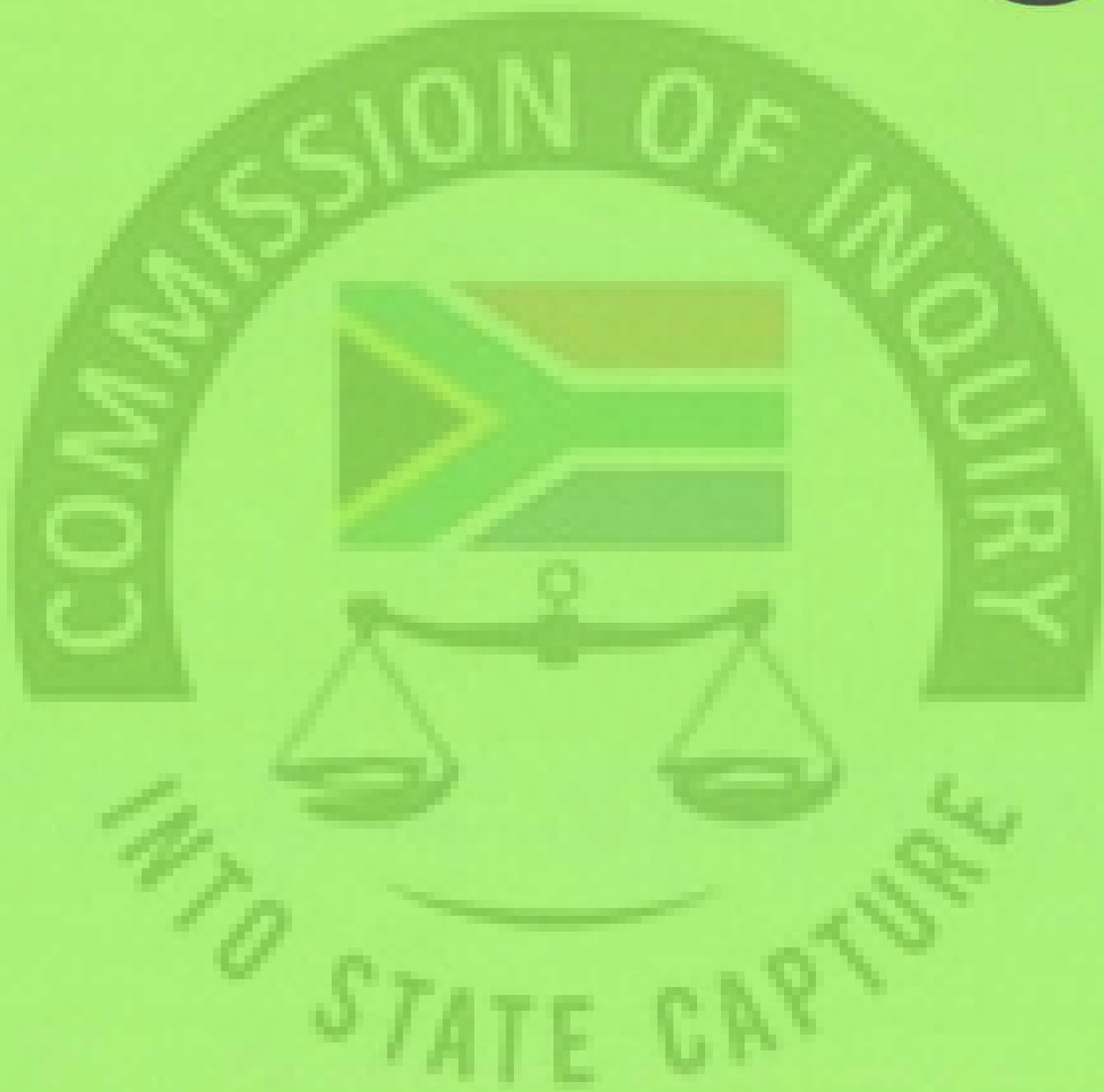
Kind Regards,

LIEUTENANT GENERAL
PROVINCIAL COMMISSIONER: GAUTENG
M PETROS

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Your digital forensics specialists

I, Ndanduleni Richard Madilonga states under oath in English that:

I am a police officer in the South African Police Service holding a rank of Lieutenant Colonel with persal No 0481932, stationed at Thohoyandou SAPS as a commander of crime prevention, contact number 015960 1049 or 0766 906 426.

This is my statement I signed with a member of the Hawks from Pretoria. I want to clarify¹ certain issues² pertaining to my previous statement.

Before I was transferred to Thohoyandou SAPS, I was working at Beitbridge Police Station as a commander. My duties included crime prevention, liaison with the immigration officials and other police officials from other stations.

In 2010 which was two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. I started³ to be suspicious and I approached them.⁴ The convoy was approaching the immigration offices and it was the same type of vehicles which are Mitsubishi Triton double cabs.⁵ It was late in the afternoon⁶ of which I cannot remember the exact time⁷. The people were dressed in suits and were approximately 10 to 12 in number.

When I approached them, one of them introduced himself to me as the leader of the group and he said to me he is a Superintendent Ncube from the Homicide Unit in Harare⁸. He then requested me if they⁹ could not find a place and sit down and discuss¹⁰. I then¹¹ took them to my office and set down for discussion¹². We then¹³ went to my office¹⁴ together with his colleagues. Superintendent Ncube told¹⁵ me that he is going to Pretoria to meet General Dramat¹⁶. He said¹⁷ to me maybe I knew about the Chief

¹ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

² The person does not address what he wants to clarify. This indicates missing information.

³ Interesting he uses the word "started" rather than was. This indicates his suspicions were resolved.

⁴ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁵ Unimportant information is very important. It is either the strategy of a deceptive person trying to delay the area of the statement where they will lie, or what appears unimportant to the reader is very important to the writer.

⁶ Unimportant information is very important. It is either the strategy of a deceptive person trying to delay the area of the statement where they will lie, or what appears unimportant to the reader is very important to the writer.

⁷ Missing information.

⁸ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁹ Uses pronoun "they" instead of "we," possibly to psychologically distance himself from the act.

¹⁰ Fails to tell what is to be discussed – deceptive people would rather lie by omission than commission.

¹¹ Missing time/information.

¹² Fails to tell what is to be discussed – deceptive people would rather lie by omission than commission.

¹³ Missing time/information.

¹⁴ Repetition of phrases indicates mental conflict or anxiety often present with deception.

¹⁵ Changes of language (said to told) without changes in reality are indicative of deception.

¹⁶ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

¹⁷ Changes of language (told to said) without changes in reality are indicative of deception.

m/s
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Your digital forensics specialists

Superintendent who had been murdered. He said that the suspects are in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

I told Superintendent Ncube that I am¹⁸ going to verify with my seniors about the arrangements. He then gave me the number of General Dramat but¹⁹ I told him that protocol does not allow us to call the General straight. I called Colonel Radzilani to verify the information²⁰ but²¹ she requested that I must call Brigadier Makushu who was a Provincial Head Protection and Security Services. I called him on his cell phone and explained to him that there are²² police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told me that he was not aware of the visit but²³ if the people are saying that they are going to meet the General I should call General Dramat directly.

I phoned General Dramat on his cell phone and he responded by saying that he is²⁴ aware of the Zimbabwean police²⁵ and I must²⁶ let them come. I used my landline if I did not use my official cell phone²⁷. I took the Zimbabwean police passports and taken²⁸ them to the immigration office to be stamped.²⁹ The registrations of their vehicles were also documented. I handed³⁰ their stamped passport and gate pass and they cross³¹ the entry gate into South Africa.

For the period of two weeks, I never heard anything from Superintendent Ncube and his group³². After two weeks I received a call from Superintendent Ncube who told³³ me that he was in town and he

¹⁸ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

¹⁹ "But" cancels part of a sentence, usually what comes before it. In this case it seems to verify that the writer will not use the phone number to call the General.

²⁰ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

²¹ "But" cancels part of a sentence, usually what comes before it. In this case it seems to verify that the Colonel will not verify the information.

²² When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

²³ "But" cancels part of a sentence, usually what comes before it.

²⁴ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

²⁵ Changes of language (people to police) without changes in reality are indicative of deception.

²⁶ "Must" indicates a very strong statement.

²⁷ This appears unimportant AND also an explanation. Where these occur together it generally indicates very sensitive material.

²⁸ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

²⁹ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

³⁰ Missing pronoun (them). Missing pronouns indicate a lack of commitment to what is being said.

³¹ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

³² Every statement is edited. Truthful people edit to take out unimportant information. Deceptive to omit important information. We ask a person to tell us what happened – not what did not. Therefore this appears to be unnecessary information.

³³ Changes of language (said to told) without changes in reality are indicative of deception. Told is a much stronger word than said, and seems unusual for this statement.

TMS H



Your digital forensics specialists

wanted to say goodbye.³⁴ I went to town and met with³⁵ them in front of Tops bottle store.³⁶ They bought liquor and they left to the border.³⁷ I did not escort them;³⁸ they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat³⁹.

The following day after the departure of Zimbabwean police I received a call from Captain Maluleke who is also known as "cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as cowboy and I asked who is cowboy and he said that he is⁴¹ Captain Maluleke and was with me at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke⁴² I remembered very well who he was. Captain Maluleke asked me about where I was. I told him that I had already crossed the checkpoint and I am coming⁴³ to town. He told⁴⁴ me to stop where I was and wait for him. After thirty minutes he came and was driving a sedan which I think⁴⁵ is a BMW.⁴⁶ He was with a male person⁴⁷ who was sited on the front passenger seat. The person moved to the back seat and I occupied the front passenger seat. I left my car next to a tree which is at the turn to Nancefield.⁵⁰

While I was on the front passenger seat⁵¹ heading to the border gate, he⁵³ told me that the Zimbabwean police whom I assisted some weeks back were looking for suspects in connection with the

³⁴ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

³⁵ This appears out of sequence. Out of sequence information often indicates something has been taken out of the statement.

³⁶ This appears unimportant AND also an explanation. Where these occur together it generally indicates very sensitive material.

³⁷ This appears unimportant AND also an explanation. Where these occur together it generally indicates very sensitive material.

³⁸ Every statement is edited. Truthful people edit to take out unimportant information. Deceptive to omit important information. We ask a person to tell us what happened – not what did not.

³⁹ Every statement is edited. Truthful people edit to take out unimportant information. Deceptive to omit important information. We ask a person to tell us what happened – not what did not.

⁴⁰ Missing pronoun (their). Missing pronouns indicate a lack of commitment to what is being said.

⁴¹ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

⁴² Repetition of phrases indicates mental conflict or anxiety often present with deception.

⁴³ When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

⁴⁴ Changes of language (said to told) without changes in reality are indicative of deception.

⁴⁵ Hedge words indicate a lack of commitment to what is written.

⁴⁶ Truthful people edit to take out unimportant information.

⁴⁷ Truthful people want us to understand what they write and usually tell us who a person is they have introduced into their statement. This is the only person the writer has failed to properly introduce so far.

⁴⁸ Too exact information (seated position) generally indicates something has been omitted. This also appears to be unimportant information.

⁴⁹ Too exact information (seated position) generally indicates something has been omitted. This also appears to be unimportant information.

⁵⁰ Every statement is edited. Truthful people edit to take out unimportant information.

⁵¹ Too exact information (seated position) generally indicates something has been omitted. This also appears to be unimportant information.

⁵² Repetition of phrases indicates mental conflict or anxiety often present with deception. The more repetitions – the more stress/anxiety.

⁵³ Changes of language (name to he) without changes in reality are indicative of deception.

ms H1



Your digital forensics specialists

death of police chief in Zimbabwe⁵⁴, and know they have found them. He told me that he was sent by his big bosses⁵⁵ to assist in deporting them because we do not have extradition agreement with Zimbabwe.⁵⁶ He said⁵⁷ that since the Zimbabwe police entered the country there (X)⁵⁸ had been busy trying to trace the suspect⁵⁹.

Captain Maluleke⁶¹ showed me the Home Affairs documents and said that they are⁶² already stamped. He said that the documents were stamped as a result of arrangement of National Home Affairs and his bosses.⁶³ While we were driving I realized that there were other BMW cars which were following us and I knew that it was a convoy. Captain Maluleke told⁶⁴ me that the suspects⁶⁵ are in the rear vehicle. He said⁶⁶ that there are two suspects and the third is still not yet found. He said they will search for him until they find him⁶⁷. As the commander, the officials at the border gate opened the gate without asking any question or stopping (X)⁶⁸ on the way after they saw me in Captain Maluleke's vehicle⁶⁹. We never stopped anywhere at the border and no documents were stamped for the purpose of deportation.⁷⁰

When we arrived at the Zimbabwe side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind us. We could not even hand the documents that⁷¹ Captain Maluleke gave me to the immigration

⁵⁴ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁵⁵ No social introduction – does not tell us who.

⁵⁶ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁵⁷ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁵⁸ Changes of language (told to said) without changes in reality are indicative of deception.

⁵⁹ Missing pronoun (they). Missing pronouns indicate a lack of commitment to what is being said.

⁶⁰ Changes of language (suspects to suspect) without changes in reality are indicative of deception.

⁶¹ Changes of language (using name) without changes in reality are indicative of deception.

⁶² When writing of the past a person should use proper past tense language. Failure to do that indicates a possible lack of commitment to what is being written.

⁶³ No social introduction – does not tell us who.

⁶⁴ Changes of language (said - told) without changes in reality are indicative of deception.

⁶⁵ Changes of language without changes in reality are indicative of deception.

⁶⁶ Changes of language without changes in reality are indicative of deception.

⁶⁷ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁶⁸ Missing pronoun (us). Missing pronouns indicate a lack of commitment to what is being said.

⁶⁹ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁷⁰ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person. Truthful people edit to take out unimportant information so they should not tell us what did not happen. When unimportant information appears with sensitive information it means that it is very sensitive information.

⁷¹ Truthful people edit to take out unimportant information so they should not tell us what did not happen.

MS HH



Your digital forensics specialists

officers of Zimbabwe because of the commotion⁷². I knew that they were police officers because I had been working at the border for a long time and I knew them⁷³. I even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country. One of the Zimbabwean police came and thanked us and said that we must not use the other gate but use the one we used when we entered.

Captain Maluleke told⁷⁴ me that what happened is top secret and people must not know of what happened. Captain Maluleke drove me back to where he found me and I entered into my car and drove home.⁷⁵ In 2012 of which I cannot remember the month and date Captain Maluleke phoned and told me that there is a person from Head Office who will be coming for investigation and that I must cooperate with him. Later a person⁷⁶ came to Thohoyandou and he had draft statement. He told me that there is a problem with the operation which was once done by the Hawks and they would like my statement to be in a particular format. He told me that the statement is for covering up and the parliament has some issues about the operation. I read the statement and realize that it was to close the gaps and not a true reflection of what happened.



⁷² When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person. When unimportant information appears with sensitive information it means that it is very sensitive information.

⁷³ When a person feels the need to explain why he is doing something it indicates this is a sensitive issue for the person.

⁷⁴ Changes of language (said to told) without changes in reality are indicative of deception.

⁷⁵ Excessive pronouns (5 or more) in a single sentence indicates that the sentence is sensitive.

⁷⁶ No social introduction.

M-1 H-1

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Your digital forensics specialists

Our Ref: PRE101_1015

Your Ref: _____

17 March 2014

Mr Innocent H Khuba
ACTING PROVINCIAL HEAD
Independent Police Investigative Directorate
Limpopo

Dear Mr. Khuba

RE: Statement Content Analysis of the Statement of LtCol. Ndanduleni Richard Madilonga

I take pleasure in submitting our final report on LtCol. Madilonga's statement for Diepsloot Cas 390/07/2012.

I confirm that I, Anne-mari van Staden (ID no. 780502 0243 080) analysed the attached statement and conclude my finding that LtCol. Madilonga should be included in your ongoing investigation as his statement proved to be deceptive.

As per my footnotes, it is clear that emphasis should be placed on the fact that LtCol. Madilonga states that they "did not discuss anything about the operation they had in Gauteng with General Dramat" (footnote 39). LtCol. Madilonga was deceptive in this matter.

Further to my analysis of LtCol. Madilonga's statement it should be noted that when he entered the vehicle that was being driven by Captain Maluleke, he occupied the front seat while the original occupant moved to the back. This indicates that LtCol. Madilonga had authority above the original person who was seated in front. It is my professional opinion that LtCol. Madilonga knew that Captain Maluleke was using him to obtain unlawful entry into Zimbabwe and he did not object to it. See footnote number 70.

Yours sincerely

A van Staden

Managing Director

PRECISION FORENSICS (PTY) LTD

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Annexure 2 A6

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Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Enq: I H Khuba
Date: 2014/01/22

Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Prosecution
Report Date	22 January 2014
Date of Last Report	09 November 2012.
Complaint Category	Section 28(1)(f) and 28(1)(h)
Complainant	Shepard Chuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot Cas 390/07/2012
Suspect Identification	Lt Gen. Dramat and others
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an

article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Belt Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.

2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.

3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maghawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short

while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorstspuit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maqhawe Sibanda A2: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Bongani Henry Yende A4: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in.

connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndobe and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Prichard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects

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were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiya being involved in the operation but that there was a person who was always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.

The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Provincial DPCI head, Gauteng Major General Sibiya too report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time they detained Prichard Chuma whom he does not know whether is related to Shepard Chuma. He will further state that he witness an assault on 2010/11/05 on Zimbabwean Nationals carried out by Captain Maluleke, W/O Makoe and Constable Leburu. He will further state that on 2010/11/05 and 22 to 23/11/2010 when they carried out the operation, there would be a figure seated in a black BMW whom Warrant Officer Makoe referred as Major General Sibiya.

Andrew Mark Sampson A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maghawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Belt Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

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She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda A20: He will state that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/11/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikini Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in-law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhekisisa Nyoni A23: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

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Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal Immigrant, Home Affairs official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Beit Bridge.

Thomas Pixane Setagane A26: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

Padile Abrina Papo A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

Nolwandle Qaba 29: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

Peter Ndwandwe A28: He will state that he is an Assistant Director with the Department of Home Affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean. Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a Police Officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any.

signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.

He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by Immigration Officer.

Job Jackson A33: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potiswa Skosana A31: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Eiberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.

He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madilonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.

In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.

For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.

When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.

Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.

Captain Maluleke told him that what happened is top secret and people must not know about it.

In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.

Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dvvhani Sharon Radzilani A54: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect

was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer. He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation. He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

Captain Ernest Nkosi A77: He will state that on 22/11/2013 after the operation which was carried out at Diepsloot he was requested by Lt Col Maluleke from DPCI Head office to take suspect Prichard Chuma to Alexandra Police station for detention but without the case number. He detained the suspect at Alexandra Police Station free of any injuries. He will further state that he wrote the cell number of Lt Col Maluleke in the Occurrence Book.

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling

requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.

Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

Warrant officer Giyani John Sambo A59: He will state that on 23/11/2010 he was officially on duty at Silverton Police station when Detective Warrant Officer Selepe brought a black male Prichard Chuma. The prisoner was booked in as a transit without body receipt. He will further state that W/O Selepe was with an unknown African male. On 24/11/2010 W/O Selepe came and book out the prisoner Prichard Chuma from Silverton Police station to Beit Bridge under Bulawayo Case number 1337/11/2010. The same prisoner was received by the African male who was with W/O Selepe the previous day and he signed the Occurrence Book as a Captain.

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that

he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads 'HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED'. He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Māqhiawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers.

Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.

While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.

They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Police station, Captain Maluleke detained the suspect and they then knocked off.

Johannes Mpati Moatshi A61: He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

Sello John Phaswana A64: His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

Tshatoa Jacob Seletela A63: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

Matsobane Silas Mokoatlo A78: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

Andries Nxumalo A65: will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

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Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices where they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organizes with his contact to look for Gordon Dube. It took two week to find a wanted suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa they managed to see the suspect and when he moved they pursued until they arrested him in Diepsloot. They found the suspect in possession of an unlicensed firearm. He saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from ballistic testing. The suspect was taken to Wierdabrug to detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was searched but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Moot Police station.

Plantinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyonl. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyonl, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyonl thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyonl to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done. He will further state that Lt General Dramat was wearing a white shirt and a red tie.

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntenti from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntenti to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Atteridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the

Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Belt Bridge.

M.S. 141

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal immigrants'. The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following;

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The Investigation at Silverton Police Station uncovered the following;

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following;

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

The investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Olievenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession of in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeti area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

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No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMENTARY EVIDENCE ACQUIRED FROM DPCI OFFICES:

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. Paragraph "1" of the report states that the Zimbabwean Police visited the office of the Divisional National Commissioner regarding Zimbabwean Nationals who were hiding in South Africa. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A89).

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime

Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found; the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating that in August 2010 General Sibiya and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibiya was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being release he was transported to Belf Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Belf Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

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Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist. It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1639) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required. The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.

Cellphone record of Major General Sibiya (0725953168): Upon perusal of the cellphone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent more than 20 SMS to Major General Dramat (0825515311). However Major General Dramat never responded to the SMS. The same automated SMS were sent to Lt General Lebeya at 0825751899. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs.

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of

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received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

Cellphone records of Lt Colonel Neethling (0827787624): He was directly reporting to Major General Sibiya. He contacted General Sibiya telephonically and in his statement he stated that he believed he reported the operation to Major General Sibiya.

Cell Phone records of Lt Col Madilonga: He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. He contacted Lt General Dramat when he well come the Zimbabwean police the first time. His cellphone records his interaction with Captain Maluleke in line with his statement.

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS

Lt General Mkhwanazi: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news, when Minister Hadebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 392/07/2011 WAS INVESTIGATED

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Innocent Humbulani Khuba A100: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals; Mr Kenneth Ratshitali, Mr. L. Maphetho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maghawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Chuma.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Port of Entries. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident. On 28/01/2013 he was called by the former Executive Director who gave him the following documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated

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25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya; Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DHA-1689) for Nelson Ndlovu, Shepard Chuma and Maghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled "journey to death in an unmarked car" and is filed as per A35.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwandwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwandwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Beit Bridge and obtained a statement of Peter Elberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton. During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree

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Neethling, Captain Maluleke, Vincent Selotole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Chuma and Nelson Ndlovu. There were also three Notification of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma and Maqhawe Sibanda. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat via the former Acting Executive Director Ms. K Mbeki on 28/01/2013. The Warrants of Detention and Notifications of Deportation received from Warrant Officer Nthlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Chuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beit Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.

On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved

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overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip /itineraries' for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013, he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenti requesting interview with his members who are mentioned in success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtain the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interviewed Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 Arch file.

On 16/07/2013, he received a Laptop Dell Col Mabuyela and Warrant Officer Danie bearing serial number CNJF24286436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 arch file.

In October 2011 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of Investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka

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representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt General Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects should have emanated from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials. The letter dated 2010/07/29 addressed to Commissioner Chibage of Zimbabwe by Lt General Dramat request a meeting on 05/08/2010 to discuss operational matter but limited to fugitive of serious crime like robberies, cash in transit and extradition.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
 - The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to

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see him. The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of Lt General Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the country was to arrest Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.

- Evaluation of the above findings: In the entire cellphone-records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.

- o He held a meeting on 05/11/2010 with Zimbabwean police planning the operation. Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.

- Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police were at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report.

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- He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.
 - Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.
- He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.
 - Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.
- He received communication regarding successes and photos of the operation through his Personal Assistance Phumla: According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails where sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals: The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- Report to parliament in response to the allegation: A copy of the letter sent by Zimbabwean authority to Col Ntenti clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was

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joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.

- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiya;
 - Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
 - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
 - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Toka, Lt General Lebeya and Major General Hlatshwayo was involved except that they received communication regarding this matter.
- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
 - The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

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It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maghawe Sibanda were deported through Beit Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlalho who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

There is a duty roster used by Immigration Officers at Beit Bridge, which confirms that Immigration Officer Kobelo Margret Mohlalho was off duty on the 7th and 8th of November 2010.

- o The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Beit Bridge.
- o On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- o The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.
- o The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order

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to handover the suspect to the Zimbabwean police. The suspects was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.

- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Beit Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011 (Silverton Cas 566/01/2011), the same day in which Johnson Nyoni and Gordon Dube were transported to Beit Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is Shadrack Wisley Kebini, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for to go on wild chase, following the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.
- The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.
- The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean Nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cell record towers recordings.

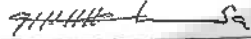
The following members' involvements were found limited to two incidents which took place on 05/11/2010 and 20-22/11/2010; Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe. They were involved in the assault of Zimbabwean Nationals during arrest.

RECOMMENDATION

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Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for;

- Kidnapping
- Defeating the ends of justice,
 - Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)


Mr. Hl KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO



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Matthews Sesoko

From: IKhuba@ipid.gov.za
Sent: Thursday, January 23, 2014 10:42 AM
To: MSesoko@ipid.gov.za
Attachments: DIEPSLOOT RENDITIONS CASE REPORT DPP.docx

(See attached file: DIEPSLOOT RENDITIONS CASE REPORT DPP.docx)



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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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Enq: I H Khuba
Date: 2014/01/22

Enq: I H Khuba
Date: 2013/09/04

Case Investigative Report

1. COMPLAINT IDENTIFICATION

1.1 CCN	2013030375
1.2 Incident Description Code	312
1.3 Type of Report	Criminal Prosecution
1.4 Report Date	22 January 2014
1.5 Date of Last Report	09 November 2012
1.6 Complaint Category	Section 28(1)(f) and 28(1)(h)
1.7 Complainant	Shepard Chuma and others
1.8 Date of Complaint	10 October 2012
1.9 SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
1.10 Suspect Identification	Lt Gen. Dramat and others
1.11 Investigator	Task Team
1.12 Assignment	Investigations
1.13 Reporting Staff Member	Innocent Khuba

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1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

- 2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal Immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Bait Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.
- 2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

- 3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.
- 3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maghawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked

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them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorspruit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maghawe Sibanda: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Bongani Henry Yende: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went

to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Nelson Ndlovu: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Petros Jawuke: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndobe and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Pritchard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiya being involved in the operation but that there was a person who was always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndobe: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.

The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Andrew Mark Sampson: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maghawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda: He will state that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He

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was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube: She will state that she is the wife of the deceased John Nyoni. It was on 26/11/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube: she will state that she is the sister-in-law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhekisisa Nyoni: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 **STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION**

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

Brigadier Mthokozelwa Zangwa: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal Immigrant, Home Affair official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this

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case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Beit Bridge.

Thomas Pixane Setagane: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

Padile Abrina Papo: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 **STATEMENTS OF HOME AFFAIRS OFFICIALS**

Nolwandle Qaba: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

Peter Ndwandwe: He will state that he is an Assistant Director with the Department of Home affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a Police Officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.

He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by Immigration Officer.

Job Jackson: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process

involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potiswa Skosana: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Eiberg: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.

He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 **STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO**

Ndanduleni Richard Madilonga: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention.

He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.

In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been

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murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come.

For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and I asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

While he was on the front passenger seat heading to the border gate, he told him that the Zimbabwean police whom he assisted some weeks back were looking for suspects in connection with the death of police chief in Zimbabwe, and now they have found them. He told him that he was sent by his big bosses to assist in deporting them because the country does not have extradition agreement with Zimbabwe. He said that since the Zimbabwe police entered the country there had been busy trying to trace the suspect.

While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.

When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.

Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.

Captain Maluleke told him that what happened is top secret and people must not know about it.

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In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.

Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dovhani Sharon Radzilani: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG WHO PARTICIPATED IN THE OPERATION.

Lt Col Neethling: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.

He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement

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and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation. He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

Warrant Officer PJD Selepe: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.

Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot.

While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices.

They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Polices station, Captain Maluleke detained the suspect and they then knocked off.

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Johannes Mpati Moatshi: He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

Sello John Phaswana: His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

Tshatoa Jacob Seletela: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

Matsobane Silas Mokoatlo: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Plantinah Mokgobu: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them about a crime that was going to take place at Diepsloot.

They then proceeded there with a backup of members from Ivory Park Police Station where they effected the arrest of Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt

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that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. General Dramat warned them not tell anyone about the operation we had just done.

After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

Constable Mngwenya: will state under oath that on the 26/01/2011 he was called by his colleagues after the arrested Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Atteridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdrew the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

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Isaac Dlamini: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer: He will state that he was investigating several cases wherein Godi Dube was a suspect. The case were as follows, Wierdabrug CAS 531/12/2010, Wierdabrug CAS 220/02/2010, Wierdabrug CAS 147/11/2010, Wierdabrug CAS 1022/12/2010, Wierdabrug CAS 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdebrug. She also met Captain Maluleke at Wierdebrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikotso. Constable Rikotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

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Specific reference to OB 276 to 279: The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirms that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

SAPS 14: The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as "illegal Immigrants". The entry was made by Sergeant Thomas Pixane Setage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following;

OB entry 22/11/10: The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010: The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The investigation at Silverton Police Station uncovered the following;

OB entry 23/11/12: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012: Warrant officer Selepe booked out Chuma to Bait Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following;

OB entry 26/01/11: Warrant Officer Johannes Mpati Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11: Captain Maluleke booked out Johnson Nyoni to Bait Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

The investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12: Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216: They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube

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was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of dockets linking Gordon Dube: Wierdabrug CAS 531/12/2010, Wierdabrug CAS 220/02/2010, Wierdabrug CAS 147/11/2010, Wierdabrug CAS 1022/12/2010, Wierdabrug CAS 310/10/2010 and Diepsloot 93/01/2011. One of these cases is Murder, where a firearm of a murdered Zimbabwean Police officer was used. The investigating officer is having a challenge in explaining to Court Officials what happened to the suspect because he handed the suspect to Captain Maluleke who in turn handed the suspect to the Zimbabwean police. The majority of these cases could not be closed in the system because of nonprocedural case disposal.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011: The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013: The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. Paragraph "1" of the report states that the Zimbabwean Police visited the office of the Divisional National Commissioner regarding Zimbabwean Nationals who were hiding in South Africa. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke: On 08/11/2010 went to Bait Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Bait Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP.

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

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Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence. He also sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating that in August 2010 General Sibiya and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibiya was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush where they ordered him to lie down. They then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After

being release he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white fortuner and he was handed to the South African Police at Beit bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist. It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Bait Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required. The stamp number 20 belonging to Bait Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Bait Bridge Duty Roster – This is a duty register used by Immigration Officers at Bait Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Bait Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.

Cellphone record of Major General Sibiya (0725953168): Upon perusal of the cellphone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent 30 SMS to Major General Dramat (0825515311). However Major General Dramat never responded to the SMS. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs.

Mr S *171*

Cellphone records of Captain "Cowboy" Maluleke (0827729518): The interaction between Major General Sibiya and Captain Maluleke was also found in a form of received and outgoing calls. Captain Maluleke also communicated with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010. He also called Zimbabwean number twice between the 5th November 2010 and 8th November 2010. The number called on these two occasions is the same and was called at times preceding critical milestones of the operation. Captain Maluleke also called Colonel Madilonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madilonga.

Cellphone records of Lt Colonel Neethling (0827787624): He was directly reporting to Major General Sibiya. He contacted General Sibiya telephonically and in his statement he stated that he believed he reported the operation to Major General Sibiya.

Cell Phone records of Lt Col Madilonga: He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. He contacted Lt General Dramat when he well come the Zimbabwean police the first time. His cellphone records his interaction with Captain Maluleke in line with his statement.

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS

Lt General Mkhwanazi: He will state that in late 2011 when he was an acting National Commisisoner of South African Police Services, he heard on the news when Minister Hadebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeysa: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiya has an automated messaging which include his number wherein automated success report or information are sent. He cannot remember what was the message all about which was sent on 05/11/2010

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The following findings were made;

- The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M L Maluleke also known as Cowboy. According to the letter retrieved from Captain Maluleke's laptop, there was a meeting in August 2010 held between Zimbabwean Authorities, General Dramat and General Sibiya wherein General Sibiya was appointed as a coordinator regarding cooperation between two countries. The obligation to assist Zimbabwe in tracing wanted suspects emanate from the agreement of the same meeting as cited in success reports addressed to General Dramat and other senior officials.
- There is enough evidence that shows that General Dramat did not only know about the operation that led to renditions of Zimbabwean Nationals but sanctioned it through the following ways;
 - **The Zimbabwean police came into the country for the purpose of arresting the wanted Zimbabwean Nationals and Lt General Dramat directed that they be allowed to proceed since they were coming to see him.** The statement of Lt Colonel Madilonga clearly spell out that the police from Zimbabwe were received by him and he contacted General Dramat who confirmed that they were coming to him. Colonel Madilonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Beit bridge Telekom records (Col Madilonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madilonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madilonga he was informed that the purpose of the Zimbabwean police to enter into the country was to arrest wanted Zimbabwean Nationals wanted in connection with the murder of Senior Police Officer in Zimbabwe.
 - **Evaluation of the above findings:** In the entire cellphone records of General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appear once which rules out any form of communication before 04/11/2010 and after the said date.
 - **He held a meeting on 05/11/2010 with Zimbabwean police planning the operation.** Success report dated 04/02/2011 addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS. The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the

Nationals who shot and killed one of their senior officers. He appointed Captain Maluleke to be a lead person during the operation.

- Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cellphone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police were at Beit Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010.

- o He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Beit Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

- Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense.

- o He congratulated officers for arresting Johnson Nyoni and advised them to keep it a secret: According to Constable Mkasibe and Mgwenya, shortly after the photos were taken, they saw General Dramat of the Hawks walking towards them from house number 1. General Dramat addressed them and thanked them for arresting the suspect. He warned them not tell anyone about the operation they had just done.

- Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the unlawfulness of the operation. If the operation was lawful he would not have warned them not to tell anyone about it.

- **He received communication regarding successes and photos of the operation through his Personal Assistance Phumla:** According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.
- **He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals:** The cellphone records of General Sibiya shows 30 SMS sent to General Dramat at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress.
- **Report to parliament in response to the allegation:** A copy of the letter sent by Zimbabwean authority to Col Ntteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was joined operation between South African Police and Zimbabwean police to trace and arrest the suspects.
- There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects. The telephone records of both Captain Maluleke and Major General Sibiya show interaction between them at various milestone of the operation. Following suggest the involvement of General Sibiya;
 - Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
 - In other operations cellphone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally.
 - The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved.
- There is insufficient evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime

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Intelligence have done when they arrested Zimbabwean Nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.

- The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;

- The documents which the police claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans are forged and have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on three documents also clearly shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the three foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge border. However the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was purported to be used was off duty and the stamp was locked in the safe and she is the only person in possession of the key. The stamp could have been easily duplicated.

There is a duty roster used by Immigration Officers at Beit Bridge, which confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on the 7th and 8th of November 2010.

- The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Beit Bridge.
- On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Beit Bridge border on 24/11/2010, to be handed to the Zimbabwean Police. Captain Maluleke provided escort, handed him over to Zimbabwean Authorities and Prichard Chuma was never seen again.
- The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs

MS *141*

started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media. This shows that the letter was not meant to acquire assistance or approval if generated after the fact. In addition he stated that the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This clearly shows that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean Nationals grace period.

- Statements of Constable Rammbuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm permanently to Zimbabwean authority.
- The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Bait Bridge for fraud. However at Silverton, the investigation uncovered that a case of Fraud against John Nyoni and Mike Dube was opened on 28/01/2011, the same day when Johnson Nyoni and Gordon Dube were transported to Bait Bridge. The warning statement of Mike Dube, whom it was discovered that his real name is not Mike Dube, stated that his cousin was communicating with the police in a deal in which he was to collect jewelry. After the deportation of the suspect to Zimbabwe, the case against John Nyoni and Mike Dube was withdrawn and never continued. This case was used as a decoy for investigators to follow the wrong leads. Both suspects were persuaded to be involved in the collection of jewelry because one of them has a name similar to the Zimbabwean National wanted for murder, Johnson Nyoni.
- The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The following members' involvements were found limited to two incidents which took place on 05/11/2010 and 20-22/11/2010; Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe. They were involved in the assault of Zimbabwean Nationals during arrest.

RECOMMENDATION

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Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally of;

- Kidnapping
- Defeating the ends of justice,
 - Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)

(The Independent Police Investigative Directorate cannot recommend any criminal charge against Major General Sibiya because the witnesses versions are not corroborated by other evidence that he was at the crime scene, e.g. cellphone records).

Mr. HI KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO



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ANNEXURE 7



Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

Innocent Khuba to: Boitumelo Sedumedi

2015/02/27 03:56 PM

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2015/02/27 03:56 PM -----

From: "Anthony Mosing (A)" <amosing@npa.gov.za>
To: "IKhuba@ipid.gov.za" <IKhuba@ipid.gov.za>
Cc: "Billy BT. Moeletsi" <bmoetsi@npa.gov.za>
Date: 2014/02/28 09:46 AM
Subject: RE: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

Dear Mr Khuba, in light of the fact that the matter has been referred to the DPP of South Gauteng for decision, you are requested to file this evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or other matter directly with him. Kind regards.

A MOSING

HEAD: SPECIAL PROJECTS DIVISION
OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
NATIONAL PROSECUTING AUTHORITY
REPUBLIC OF SOUTH AFRICA

TEL: +27 128456366
MOBILE: +27 847388076

From: IKhuba@ipid.gov.za [mailto:IKhuba@ipid.gov.za]
Sent: 28 February 2014 08:53 AM
To: Anthony Mosing (A)
Subject: Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

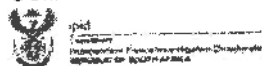
----- Forwarded by Innocent Khuba/Limpopo/IPID on 2014/02/28 08:51 AM -----

From:	Matthews Sesoko/NorthWest/IPID
To:	Innocent Khuba/Limpopo/IPID@IPID
Date:	2014/02/27 12:56 PM
Subject:	Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

Matthews Sesoko
 Acting Chief Director: Investigation & Information Management
 Independent Police Investigative Directorate
 Private Bag X941, Pretoria, 0001
 City Forum Building, 114 Madiba (Vermeulen) Street, Pretoria, 0002
 Tel: (012) 399 0048
 Fax: (012) 399 0196
 Fax2email: 0866301019

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Cell: 0836328749



----- Forwarded by Matthews Sesoko/NorthWest/IPID on 2014/02/27 12:56 PM -----

From:	Tshiamo Mahibila/HeadOffice/IPID
To:	Matthews Sesoko/NorthWest/IPID@IPID
Cc:	Nomkhosi Netsianda/HeadOffice/IPID@IPID, Grace Shuma/HeadOffice/IPID@IPID
Date:	2014/02/27 12:45 PM
Subject:	Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

FYI

----- Forwarded by Tshiamo Mahibila/HeadOffice/IPID on 2014/02/27 12:44 PM -----

From:	"GP:DPC DPCI Secretary" <gpdpcisec@saps.gov.za>
To:	<TMahibila@ipid.gov.za>
Date:	2014/02/26 02:23 PM
Subject:	Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

<<CCF20140226_00007.jpg>> Go <<CCF20140226_00008.jpg>> od
 <<CCF20140226_00009.jpg>> afternoon

Herewith attached documents for your information as per attached request from Mr Khuba.

Respectfully

MAJOR GENERAL SM SIBIYA
 Provincial Head: Directorate for Priority Crime Investigation
 GAUTENG

PEARL ANGEL POMUSER
 OFFICE EXECUTIVE : OFFICE OF THE PROVINCIAL HEAD: DPCI: GAUTENG
 Tel +27 11 373 3300 : Fax: +27 11 373 3341 : Cell: 071 481 2536
 17 Diagonal Street : JSE Building : Third Floor : Johannesburg
 :

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ANNEXURE E



Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA
 Innocent Khuba to: Boitumelo Sedumedi

2015/02/27 03:56 PM

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Cc: "Billy BT. Moeletsi" <bmoetsi@npa.gov.za>
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A MOSING

HEAD: SPECIAL PROJECTS DIVISION
 OFFICE OF THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
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Date:	2014/02/27 12:56 PM
Subject:	Fw: Emailing: RESPONSE TO QUESTIONS POSED BY IPID - MAJOR GENERAL SHADRACK SIBIYA

Matthews Sesoko
 Acting Chief Director: Investigation & Information Management
 Independent Police Investigative Directorate
 Private Bag X941, Pretoria, 0001
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 Tel: (012) 399 0048
 Fax: (012) 399 0196
 Fax2email: 0866301019

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**Office of the
National Director of Public
Prosecutions**



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INTERNAL MEMORANDUM

TO : ADV. A. M. CHAUKE
DIRECTOR OF PUBLIC PROSECUTIONS: SOUTH
GAUTENG

FROM : ADV. A. MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT : DIEPSLOOT CAS 390/07/2012

DATE : 14 FEBRUARY 2014

* 18/6 Khulisa : McBride gave decision, took back
to NDPP. Had meeting there.
Will phone back

1. Please find attached the case docket with accompanying files for your attention and further action as discussed with the Head of NPS. The files included are as follows:

- 1x A- section of docket
- 1x B- section of docket
- 1x forensic report of retrieved computer documents and emails
- 1x AVL analysis
- 2x Cell phone data of various cell phones
- 1x Copies of Wierdabrug case dockets.

2. I trust you find the above in order.

Kind Regards

(18763685)
Adv. A. Mosing

ADV. A. MOSING
SPECIAL PROJECTS DIVISION

OFFICE OF THE NDPP
DIEPSLOOT CAS 390/07/2012

6x Leven Arch files
and 1x thin file handed
to I H Khulisa from IPI
084 7022741

accompanied by
Glen Angus
083 5655320

on 7 March 2014

Signed
Glen Angus
2014/03/07

Signed
G. Angus
07/03/2014

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ipid

Department
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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RECOMMENDATIONS

TO

NDPP

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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9525, Polokwane, 0700, 66 A Market Street, Fennic Building, 2nd Floor, Polokwane
Tel.: (015) 291 9800 Fax: (015) 295 3409

Case Investigative Report

COMPLAINT IDENTIFICATION

CCN	2013030375
Incident Description Code	312
Type of Report	Criminal Recommendation to NDPP
Report Date	18 March 2014
Date of Last Report	18 March 2014
Complaint Category	Section 28(1) (f) and 28(1) (h)
Complainant	Shepard Tshuma and others
Date of Complaint	10 October 2012
SAPS CR/CAS Number	Diepsloot CAS 390/07/2012
Suspect Identification	Lt Col M Maluleke
Investigator	Task Team
Assignment	Investigations
Reporting Staff Member	Innocent Khuba

1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiya. The case was reported as result of parliamentary question by Cope Member of Parliament and an article by Sunday Times. The case was referred to the Independent Police Investigative Directorate by Civilian Secretariat for further investigation.

2. SUMMARY OF ALLEGATIONS

The following allegations were made:

- 2.1 It is alleged that between 04/11/2010 and 31/01/2011 Captain M L Maluleke, Warrant Officer Makoe and Constable Radebe, through the direction of General Sibiya and Lt General Dramat, conducted operations in Soweto and Diepsloot to trace Zimbabwean Nationals. The suspects were wanted in connection with the murder of a Zimbabwean police Colonel in Bulawayo. The members were accompanied by Zimbabwean Police. Five Zimbabweans were arrested in Diepsloot and detained at various stations as illegal immigrants and others for fictitious crimes. They were allegedly assaulted by SAPS members and Zimbabwean Police and transported to Beit Bridge where they were handed over to the Zimbabwean Authorities. Four of them were reported murdered in the hands of Zimbabwean Police.

- 2.2 According to the allegation, Major General Sibiya was also part of the operation.

3. CONSTITUTIONAL AND STATUTORY MANDATE

- 3.1 Section 206(6) of the Constitution of the Republic of South Africa provide that, on receipt of a complaint lodged by a Provincial Executive, an independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS.
- 3.2 Section 28 (a) (h) of the Independent Police Investigative Directorate Act 1 of 2011 provides that the Directorate must investigate any matter referred to as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case maybe, in the prescribed manner.

4. AVAILABLE EVIDENCE

4.1 STATEMENTS OBTAINED FROM INDEPENDENT WITNESSES

The following witnesses were interviewed and statements obtained.

Shepard Chuma A1: He will state that on Friday 05/11/2010 at 20h00 he was at 6954 John Malatjie Street Diepsloot together with Nelson, Maqhawe and Witness standing when they were approached by two unknown Black males. One of them produced an appointment card and the other produced a firearm and ordered them to lie down. He will further state that one of the Police Officer then took out a paper and started reading names like Mthelisi Sibanda, Godi Dube, Prichard Chuma and John. He asked them whether they know such people but none of such names were known to them. The officer was wearing a cowboy hat and they heard other police officers calling him Cowboy. Few minutes later, Cowboy asked the other Police Officers about where to detain them. While they argued about the place to detain them, the other officer suggested that General Sibiya be consulted to provide direction in the matter. A short while later General Sibiya alighted from a Black BMW. He will state that they were assaulted and when they arrived at Orlando Police Station one of the Officers called "Leburu" took his R300 which was in a wallet in his back pocket. They were detained

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and on 2010/11/06 at 12h00 the officer called "Cowboy" came and took the finger prints of his co-accused but his fingerprints were not taken. He was informed that his finger prints will be taken at Musina.

On Monday 2010/11/08 at 12H00 Cowboy came to collect them. They were taken into a marked vehicle of Orlando SAPS driven by the officer in uniform. They followed Cowboy who was driving a white Nissan D/C. They were taken to a certain place called Bronkhorspruit where they were moved into a Toyota being handcuffed. They were then taken to Musina and they arrived at 17h00. They took one officer at Musina whom Cowboy said he will make matters easy for them to cross the border. He will further state that at the border, Cowboy went to Home Affairs office and few minutes later came back. They were transported in a Nissan D/C and crossed the border with Cowboy using a wrong lane but they were never stopped. When they were on the other side Zimbabwean police came and placed handcuffs on top of other handcuffs and Cowboy came and removed his handcuffs. They were taken to a Zimbabwean police car. He will state that they were interrogated by the Zimbabwean Police Officers about a Zimbabwean police Colonel who was killed. They were placed in separate cells and after 11 days he was released. When he enquired about his friend he was told that he was killed by the Zimbabwean police.

Maghawe Sibanda A2: He will state that on 05/11/2010 at 20h00 he was at his residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They instructed them to lie down and they cooperated with them. Few minutes later there were many cars of Police Officers in civilian clothes and they started searching them. He will further state that they were assaulted and the police also took R500-00 which was in his pocket. There was another police officer wearing Cowboy hat reading names on the paper and asking them whether they knew the names of such people. He will state further that he saw General Sibiya coming out of a black BMW and gave instruction that they should be taken to Orlando SAPS.

Nelson Ndlovu A3: He will state that on 05/11/2010 at 20h00 he was at his younger brother's residential place in Diepsloot when he was approached by two Black Males who identified themselves as Police Officers. They ordered them to lie down and then started to assault them. He identified one of the Police Officer by the nickname Leburu. After their arrest the Police Officers argued about where they should detain them and one of them suggested Randburg. General Sibiya gave the instruction that they must be detained at Orlando SAPS. They were then taken to Orlando SAPS but Shepard Chuma and Witness went with the police to show them where John stays.

Bongani Henry Yende A4: He will state that he is a member of the South African Police Services attached to Crime Intelligence. During October 2010 he was nominated to be a member of Task Team called Tactical Operations Management Section (TOMS) which was led by General Sibiya. On 2010/11/05 he received a call from W/O Makoe of DPCI in Gauteng who was also part of TOMS informing him that General Sibiya wanted them to meet in order to look for four suspects who are wanted in connection with the murder of police Colonel in Zimbabwe. He then went to Fourways Shopping Center with Constable Desmond Campbell who was also part of TOMS to meet with W/O Makoe. On their arrival at the Shopping Center W/O Makoe also

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introduced two Zimbabwean police to them. He will further state that he was informed by W/O Makoe that the two officers came through the office of General Dramat. At that time General Sibiya was seated in a navy blue BMW and he could not go and greet him. They went to Diepsloot together with Captain Maluleke (also known as Cowboy), W/O Jawuke and Constable Leburu Radebe to identify the house of the suspects.

Captain Maluleke came back and informed them that he left the two officers observing the movements of the suspects at their residence. On their arrival at the suspect's place of residence, Captain Maluleke searched the suspects and confiscated their passports. There were four men who were lying on the ground and the two Zimbabwean police said that the four men are wanted in connection with murder of a Zimbabwean police Colonel in Bulawayo. The suspects were taken to Orlando and detained as illegal immigrants. On 23/11/2010 he was briefed by W/O Makoe that the two suspects who were arrested were subsequently killed in Zimbabwe. He will further state that the suspect Prichard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiya and whenever torture of the suspects was to be carried out, he condoned it.

Petros Jawuke A5: He will state that during October 2010 he was nominated to be part of a Task Team Called "TOMS" in Gauteng Province and that the team operated under the command of General Sibiya. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiya wanted all TOMS members to meet in Fourways because there was a Colonel who was murdered. He will state that he collected W/O Ndobe and rushed to Fourways where they met with other members.

He will state that W/O Makoe instructed him to join Captain Cowboy Maluleke and Constable Leburu Radebe to identify the suspects address. On their arrival at the identified house they found a car standing outside but there was no one inside the car. He will state that four men came to the vehicle and that they arrested them and detained them at Orlando Police Station as illegal immigrants but not the Zimbabwe murder case as indicated at the beginning of the tracing process.

He will further state that on 2010/11/23 the second operation was arranged and that he got a call from W/O Makoe that their Commander General Sibiya wanted them to meet at Diepsloot Shoprite. General Sibiya was present in the second operation. They went to Diepsloot where an African Male Prichard Chuma was found and arrested for murder of the Colonel in Zimbabwe.

Desmond Campbell A6: He will state that on 2010/11/05 General Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He received a call from Constable Radebe that they have already arrested the suspects.

He will further state that the suspects were assaulted since he heard screams but did not take part in the assault of the suspects. The suspects were arrested in connection with a murder of the police Colonel in Zimbabwe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants and not on the Zimbabwe Murder case of the Colonel. On 22/11/2010 until the early hours of 23/11/2010 Prichard Chuma was arrested and detained in Alexandra. He never saw General Sibiya being involved in the operation but that there was a person who was

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always seated in the black tinted BMW and W/O Makoe referred to the person as General Sibiya.

Alfred Ndohe A7: He will state that during October 2010 he was nominated to be part of Task Team called "TOMS" in Gauteng Province headed by General Sibiya. On 2010/11/05 Gen. Sibiya arranged with W/O Makoe to call them for operation at Diepsloot for tracing wanted suspects in a murder case where a Colonel was killed. He was not aware that the suspects that they were tracing were needed in a Zimbabwe case. He received a call from Constable Radebe that they have already arrested the suspects.

The suspects were assaulted by General Sibiya, Captain Cowboy and W/O Makoe. He will state that the four suspects were then detained at Orlando Police Station as illegal immigrants but not on the Zimbabwe murder case of the murdered Colonel.

Desmond Campbell A11-Additional statement: He will state that he was based at Johannesburg Central Crime Intelligence before receiving a call up instruction from Gauteng Provincial DPCI Head, Major General Sibiya to report at Gauteng TOMS office. On 22/11/2010 of which he cannot remember the exact time they detained Prichard Chuma whom he does not know whether is related to Shepard Chuma. He will further state that he witnessed an assault on 2010/11/05 on Zimbabwean Nationals carried out by Captain Maluleke, W/O Makoe and Constable Leburu. He will further state that on 2010/11/05 and 22 to 23/11/2010 when they carried out the operation, there would be a figure seated in a black BMW whom Warrant Officer Makoe referred as Major General Sibiya.

Andrew Mark Sampson A12: He will state that he is a White Male self employed as a Project Manager of House Constructions. He knew Maqhawe Sibanda as a sub-contractor on his building sites. He will state that Mr. Sibanda vanished for a week and resurfaced again. He was informed by Mr. Sibanda that his disappearance was as result of his arrest in connection with the alleged murder of a Zimbabwean Colonel. He was taken to Beit Bridge but released along the way and he had to find his way back because he did not have money and his cell phone was confiscated by the police. He will state that he was requested by Mr. Sibanda to call the said police Captain for his cell phone. He called the police Captain and he confirmed that the cell phone will be returned. He does not know whether such phone was finally returned to Mr. Sibanda.

Sibongile Mpofu A24: She will state that she is a neighbor of the deceased Johnson Nyoni. She will state that she witnessed a group of unknown Policemen assaulting the deceased who was lying down on the furrow of running water as it was raining. She will state that the deceased was assaulted by means of being kicked with booted feet. She will state that she cannot recall the exact date but it was during January 2011. She will state that the deceased was also pepper sprayed on his face and that he was having bloodied mucous coming out of his nostrils.

She will state that she was standing at the distance of about 20 meters when she witnessed the incident and that it was still in the morning around 10:00. She will state that she never saw what happened inside the shack. She will state that she learnt that the deceased was indeed murdered after a month from his younger brother. She will state that she may not be able to identify them if she can see them again.

Reasons Mhlawumbe Sibanda A20: He will state that on November 2010, on the date in which he cannot remember the date he visited his ex-girlfriend Brightness Nka Ncube who was staying with his distant sister Rachel Ncube. He slept over and in the middle of the night he was woken up by the police looking for John the boyfriend of Rachel. He was assaulted by a police whom he cannot identify, since it was in the dark. There was another Police Officer who was flashing a cellphone on their faces trying to identify them. He will further state that John was not there and they were freed when they indicated to the police that none of them was John.

Rachel Ncube A21: She will state that she is the wife of the deceased John Nyoni. It was on 26/01/2011 at 10h00 when she was in her shack with her husband Johnson Nyoni when police arrived and started assaulting him. The police entered the shack and said that they were looking for a firearm which they alleged that her husband used to kill a policeman in Zimbabwe. There were five (5) police vehicles, and her husband was taken away by the police and that was the last time she saw him. In February 2011 she received a call from Bikinis Nyoni, the brother of the deceased that Johnson Nyoni has died.

Brightness Nka Ncube A22: she will state that she is the sister-in-law of the late Johnson Nyoni. On the 5th or 6th of November while she was asleep she was woken up by the police who pretended to be Johnson Nyoni and later changed to indicate that they are in fact Police Officers. She will further state that she was assaulted by the police who were looking for Johnson Nyoni. The police freed them after they realized that Johnson was not amongst them. She learned later that Johnson Nyoni was murdered by the police in Zimbabwe.

Madala Bhekisisa Nyoni A23: He will state that he is the brother of late Johnson Nyoni and on 01 March 2011 he telephonically contacted his brother in law Orbed Ndlovu from Bulawayo in Zimbabwe who informed him that his brother Johnson Nyoni is late and was found at Central Mortuary in Bulawayo. He will further state that he then went to Bulawayo in Zimbabwe and at the mortuary he found the body of his brother. The body of Johnson Nyoni had a bullet wound on the collar (neck) just above the chest and it exited at the back. There was an information note attached to the body stating that Johnson Nyoni was involved in the crossfire at Gwanda in Zimbabwe. He will further state that he attended Johnson Nyoni's funeral which was held at Tsholotsho in Zimbabwe.

4.2 STATEMENTS OF MEMBERS AT ORLANDO POLICE STATION

The following statements were obtained from members of SAPS based at Orlando police station who are witnesses in the case.

Brigadier Mthokozelwa Zangwa A25: He will state that he is a Station Commander of Orlando Police Station. He became aware of the allegation of deportation of Zimbabwean foreign Nationals in 2012. He will state that as part of his own investigation he perused the registers to check if there were indeed Zimbabwean nationals detained at Orlando Police Station. According to OB 279/11/2010 the said Foreign Nationals were arrested by Captain M L Maluleke. He also discovered that the

Foreign Nationals were detained until 08/11/2010. The procedure is that when a person is arrested and is suspected to be illegal immigrant, Home Affairs official is called to verify the status of the person before he or she is taken to Lindela for deportation. He does not know why the procedure was not followed by the police in this case. He will further state that Captain Maluleke confirmed that he indeed took the said Foreign Nationals to Beit Bridge.

Thomas Pixane Setagane A26: He is a member of SAPS stationed at Orlando. On 06/11/2010 Captain Maluleke came to the holding cells with four foreign national namely Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma. The four Foreign Nationals were registered on the OB and cell register. He will state that it was for the first time for him to experience a situation where a member of DPCI arrest and detain a person for being an illegal immigrant.

Padile Abrina Papo A27: She will state that she is a Constable and that during the time of incident she was still a trainee. On 2010/11/08 at 05h45 she reported on duty and she was posted at the cells. On the same day she was tasked by W/O Marule to write the Occurrence Book. She made entries as directed and not as she observed because she was a Trainee.

4.3 STATEMENTS OF HOME AFFAIRS OFFICIALS

Nolwandle Qaba 29: She will state that she is a Director responsible for Deportation. She will further state that the incident that took place in 2010 occurred before she joined the department but upon being informed of the facts of the case by her juniors, she realized that members of the SAPS did not comply with the procedure when they deported the four Zimbabwean Foreign Nationals. She stated that a member of SAPS is not allowed to deport any person without the involvement of Home Affairs. The person suspected to be illegal foreigner must be verified by the Immigration Officer and the High Commissioner or the Embassy must confirm that such person is their citizen.

Peter Ndwandwe A28: He will state that he is an Assistant Director with the Department of Home affairs in Soweto. He started knowing about the incident involving four Zimbabwean Foreign Nationals in 2012 when he was contacted by Mr. M Matthews who is a Chief Director at their Head Office. He will further state that the four Zimbabwean nationals were not supposed to be deported because from 20/09/2010 to 31/12/2010 there was DZP which is Dispensation for Zimbabwean Project initiated by the Minister to allow all Zimbabweans without legal documents to stay in the country for 90 days in order to apply for legal documents. There is no Zimbabwean who was supposed to be deported on the basis of illegal documents during that period.

He will also further state that in 2012, few days after receiving a call from Mr. M Matthews a Police Officer by the name of Maluleke visited his office and showed him Home Affairs documents with signature and asked him whether he could identify any signature on the documents. He told Mr. Maluleke that the signature does not belong to any of his people. The documents were copies and Mr. Maluleke left in a hurry without showing him the documents in full.

He will further state that no police officer is allowed to deport any person and any person suspected to be an illegal foreigner must be screen by Immigration Officer.

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Job Jackson A33: He will state that he is an Acting Deputy Direct responsible for the day to day running of Lindela Holding facility. In his statement he outlined the process involved in the deportation of a person from Lindela. He will further state that the incident took place before he was transferred to Lindela.

Potiswa Skosana A31: She will state that she is an Immigration Officer Station at Soweto. She will further state that the form Warrant of Detention of Illegal Foreigner (BI-1725) was discontinued in 2008 and that the Notification of Deportation Form must be accompanied by the fingerprints. She will further state that in all cases police call them to screen the illegal foreigners before such persons are taken to Lindela.

Johannes Lodewickus A30: He will state that he is a Deputy Director in the Department of Home Affairs at Soweto. He confirmed that the number on the Detention Warrant and Notification of Deportation form provided by the police does not belong to any Home Affairs official in Soweto.

Richard Peter Eiberg A37: He state that he is an Immigration Officer based at Beit Bridge. He will further state that when SAPS bring an illegal foreigner at Port of Entry they must hand in a Body Receipt form and not the Detention Warrant. The Warrant of Detention is not a deportation document and must not be produced or stamped at Port of Entry.

He will dismiss the allegation that the stamp used on the documents claimed to be Home Affairs documents by the police is a deportation stamp.

Kobela Margret Mohlahlo A39: She will state that she is an Immigration Officer based at Beit Bridge and she had been a custodian of Stamp 20 since 2010. She had been in control of stamp 20 and when she is not in the office the stamp would be locked in the safe. She is the only person in possession of the key. She will state that on the 7th and 8th of November 2010 she was off duty and the stamp was locked in the safe. She does not know how stamp 20 appears on the documents which the police claim to be deportation papers because on the day in which the documents were stamped she was off duty and the stamp was locked in the safe.

4.4 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

Ndanduleni Richard Madllonga A51: He will state that he is a Police Officer in the South African Police Service holding a rank of Lieutenant Colonel stationed at Thohoyandou SAPS as a Commander of Crime Prevention. He will further state that the statement is additional to the statement he signed with a member of the Hawks from Pretoria. He wants to clarify certain issues pertaining to his previous statement.

Before he was transferred to Thohoyandou SAPS, he was working at Beit Bridge Police Station as a Commander. His duties included Crime Prevention, liaison with the Immigration Officials and other police officials from other stations.

In 2010, two weeks before the 8th November, there was a convoy of vehicles from Zimbabwe entering into South Africa. As he was suspicious, he approached them. The convoy was approaching the Immigration Offices. When he approached them, one of them introduced himself to him as the leader of the group and he told him that he is

MIS

141

Superintendent Ncube from the Homicide Unit in Harare. He then requested him if they could not find a place to sit down and discuss.

Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered. He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects.

Removal 1 → For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe. They did not discuss anything about the operation they had in Gauteng with General Dramat.

The following day after the departure of Zimbabwean police, he received a call from Captain Maluleke who is also known as "Cowboy". It was on 08 November 2010 between 16 and 17:00, when he called and introduced himself as Cowboy and asked as to who is Cowboy. He said that he is a Captain Maluleke and was with him at Paarl in Cape Town in 2005. When he said that he is Captain Maluleke, he remembered very well who he was. Captain Maluleke asked him where he was, and he said he had already crossed the checkpoint. He was told to stop and wait for him. After thirty minutes he arrived and was driving a Sedan which he thinks is a BMW. He was with a male person who was seated on the front passenger seat. He then entered into the vehicle after the passenger had moved to the back seat.

Removal 2 → While they were driving he realized that there were other BMW cars which were following them and he knew that it was a convoy. Captain Maluleke told him that suspects are in the vehicle behind them. He said that there are two suspects and the third one is still not yet found. He will further state that he never stopped anywhere at the border and no documents were stamped for the purpose of deportation.

When they arrived at the Zimbabwean side the vehicle stopped and immediately all the vehicles were surrounded by Zimbabwean police. They then pulled the suspects from the back seat of the vehicle behind them. He knew that they were Police Officers because he had been working at the border for a long time and he knew them. He even saw the vehicles that crossed two weeks ago when Superintendent Ncube entered the country.

Thereafter one of the Zimbabwean police came and thanked them and said that they must not use the other gate but use the one they used when they entered.

Captain Maluleke told him that what happened is top secret and people must not know about it.

In 2012 of which he cannot remember the month and date, Captain Maluleke phoned and told him that there is a person from Head Office who will be coming for investigation and that he must cooperate with him.

Later a person came to Thohoyandou and he had a draft statement. He was told that there is a problem with the operation which was once done by the Hawks and they would like his statement to be in a particular format. He told him that the statement is for covering up and the parliament has some issues about the operation. He will further state that he read the statement and realize that it was to close the gaps and not a true reflection of what happened.

Brigadier Joseph Makushu A53: He will state that in 2010 he was the Head of Security and Protection Services responsible for eight Borders of which one of them is Beit Bridge. He will further state that Colonel Madilonga was one of his team members

Handwritten marks: a signature and the number 141.

posted at Beit Bridge reporting under Colonel Radzilani. He remembers receiving a call from Colonel Madilonga in 2010 requesting permission to allow Zimbabwean Police who were going to see Major General Dramat. He then instructed him to call General Dramat directly because he did not want to be involved in the operation which he was not previously informed about. He will further state that it was the last time he spoke to Colonel Madilonga about the Zimbabwean Police.

Colonel Dovhani Sharon Radzilani A54: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Beit Bridge Port of entry. She will further state that in 2010 Colonel Madilonga informed her about the Zimbabwean Police who were about to enter the country to see Major General Dramat. She cannot remember whether he informed her telephonically or he came to her office. She will further state that she told Colonel Madilonga to speak with Brigadier Makushu about the issue.

4.5 STATEMENTS OF TOMS MEMBERS IN GAUTENG AND PRETORIA

Lt Col Neethling A55: He stated that he is a member of South African Police Services stationed at the Directorate of Priority Crimes, Provincial Office in Gauteng. In November 2010 of which he cannot remember the exact date, he received a request from Captain Maluleke to assist in arresting a suspect in the Fourways area. He met with Captain Maluleke at Diepsloot who then led him to the spot where the suspect was. Captain Maluleke walked towards him and briefed him, informing him that he is investigating a case of murder of a Zimbabwean police officer.

He did not ask any question because he knew Captain Maluleke to be working for "Cross Border Desk" at the Head Office of the Hawks. He also did not ask question because he knew that Captain Maluleke was representing the Head Office. He considers himself to be less knowledgeable in Cross Border crimes than Captain Maluleke. He discussed the tactical approach of the operation with his team since he considered the operation to be high risk. He positioned himself at the back of the vehicle convoy down a very narrow alley leading to an informal structure. There were three Police Officers whom later he discovered that they were Zimbabwean police. They were dressed in neat trousers, collar shirts and suits jackets.

After 15 minutes his members came out and informed him that they found the intended target and that Captain Maluleke had arrested him. They drove out of the settlement and stopped at the shopping center. Captain Maluleke informed him that they also have to arrest other suspects in Soweto. He was informed the next day that other two suspects were also arrested.

He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them over to Zimbabwean Authorities. He did provide a team to escort the suspects. He believes he must have reported such arrests to Major General Sibiya.

Captain Arnold Boonstra A60: He will state that in November 2010 (a date and time of which he cannot remember) he was requested by Lt Col Neethling to assist in tracing the suspects who were wanted by Captain Maluleke. He went to Diepsloot shopping Centre and waited for the members involved in the operation to come and fetch him. They came in a convoy and he followed. It was at night and he cannot

m-3 141

remember the exact time. He approached Lt Col Maluleke known as Cowboy to provide him with the case number or reference number. He gave him a reference number from the file he was holding. He also told him that the suspects were wanted in connection with murder of a Police Colonel in Zimbabwe. He also mentioned that the police Colonel was killed during the Shoprite robbery. He does not remember precisely whether he said Shoprite robbery took place in Zimbabwe or South Africa.

The operation moved to Soweto but he did not see people who were arrested. He did not witness any assault because he was not near the operation. He just heard Lt Col Maluleke saying that he will detain the suspects in Soweto.

Captain Ernest Nkosi A77: He will state that on 22/11/2013 after the operation which was carried out at Diepsloot he was requested by Lt Col Maluleke from DPCI Head office to take suspect Prichard Chuma to Alexandra Police station for detention but without the case number. He detained the suspect at Alexandra Police Station free of any injuries. He will further state that he wrote the cell number of Lt Col Maluleke in the Occurrence Book.

Warrant Officer PJD Selepe A56: He will state that he is employed by DPCI in Gauteng on a rank of a Warrant Officer. In November 2010 of which he cannot remember the exact date he received a call from his Commander Lt Col Neethling requesting him to assist Captain Maluleke in escorting a suspect. He told him that Captain Maluleke will provide details of the trip.

He then called Captain Maluleke who confirmed that he needed assistance to transport a suspect to Musina. He requested him to use his vehicle because it had a blue light. He was in possession of BMW 330 with registration number TJH588 GP. He cannot remember the details of the trip but he remembers arranging with Captain Maluleke to meet at Alexandra Police Station on 23/11/2010 as recorded in the Occurrence Book to book out the said suspect. Captain Maluleke arrived and was driving a Nissan Hard body Double Cab.

Captain Maluleke told the officer at the Service Centre the name of the suspect and the suspect by the name of Prichard Chuma was brought to him. Captain Maluleke handcuffed the suspect and took him to the BMW. He then drove the vehicle being escorted by Captain Maluleke. He did not know what the suspect was wanted for and that he was just carrying out the request of his commander. He was told by Captain Maluleke that the suspected should be taken to Silverton Police station. He drove the suspect to Silverton where he was booked in the cells. He does not remember whether he booked the suspect himself or Captain Maluleke did it. After booking the suspect Captain Maluleke told him that on 24/11/2010 he must assist in escorting the suspect to Musina.

On 24/11/2010 he went to Silverton DPCI's office as directed telephonically by Captain Maluleke. When he arrived the following day, he discovered that the suspect he transported the previous day was no longer in the cells in Silverton Police Station but with Captain Maluleke. He was then brought to his vehicle and after he sat down, Captain Maluleke placed iron legs on him. They then drove to Musina while Captain Maluleke was providing escort. Captain Maluleke was in the company of a female person not known to him.

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147

On arrival at Musina Captain Maluleke signaled using the head lights that they have to proceed straight to the border. He then proceeded to the border and when they arrived, they found the entry gate having a long queue. He used the exit gate as entrance gate. The police stopped them before they proceeded any further but when he put the blue light of his vehicle on, they gave way. He stopped in front of the police station at Beit Bridge and Captain Maluleke came over to his car, released iron legs from the suspect and headed to the Community Service Centre. He then went back and slept over in Polokwane.

Warrant officer Giyani John Sambo A59: He will state that on 23/11/2010 he was officially on duty at Silverton Police station when Detective Warrant Officer Selepe brought a black male Prichard Chuma. The prisoner was booked in as a transit without body receipt. He will further state that W/O Selepe was with an unknown African male. On 24/11/2010 W/O Selepe came and book out the prisoner Prichard Chuma from Silverton Police station to Beit Bridge under Bulawayo Case number 1337/11/2010. The same prisoner was received by the African male who was with W/O Selepe the previous day and he signed the Occurrence Book as a Captain.

McIntosh Polela A76: He will state that in December 2010 to May 2013 he was employed by South African Police Services as a spokesperson for the DPCI. He was reporting directly to Lt General Dramat and Brigadier Mashigo. He will further state that he remember one time being introduced to the Zimbabwean Police who were having a meeting with General Dramat. He cannot remember when and how the meeting was conducted since he was not part of the meeting. In 2011 he received an inquiry from Mzilikazi wa Africa who wanted to be clarified of renditions of Zimbabwean nationals. A meeting was held between him and Lt General Dramat, Col Basi and Captain Maluleke to discuss the issue. During the meeting Captain Maluleke denied to have handed any person to Zimbabwean Authorities without the involvement of Home Affairs. Lt General Dramat also denied having known any renditions of the Zimbabwean nationals. He will further state that he telephonically contacted Major General Sibiya to find out whether he knew about the renditions of Zimbabwean nationals and he denied having knowledge of such. He will further state that he does not remember an incident in which he moved from house number to house number three at the DPCI office and Lt General Dramat addressing the people about the arrest of the Zimbabwean nationals.

Masocha Rodgers Nthlamu A80: he will state that on 11/11/2011 he received an investigation from his commander Colonel Basi by giving him a copy of a newspaper article that reads 'HAWKS AND SA POLICE ARRESTING SUSPECTS AND SENDING THEM OVER THE BORDER TO BE MURDERED'. He will further state that he investigated the case by interviewing members of the Hawks Lt Col Maluleke who also gave him copies of warrants of detentions of the following individuals, Dumisai Witness Ndeya born 1987/05/10, Nelson Ndlovu born 1985/11/14, Maghawe Sibanda born 1988/07/13 and Shepard Chuma born 1988/07/15. He also approached Interpol and checked whether the above suspects were on the list of wanted suspects. He obtained the statement of Lt Col Neethling, Major General Sibiya, and Mr WCR Voster. He will further state that during the investigation he was unable to find the person who leaked the documents to the media.

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97

4.6 STATEMENTS OF TRT MEMBERS WHO ASSISTED IN THE ARREST OF JOHNSON NYONI.

Avhashoni Desmond Takalani A62: He is employed by the South African Police Services in Gauteng stationed at Johannesburg Central Police station under the TRT unit. On 2011/01/12 at 11h00 in the morning he was on duty in a full uniform posted at Diepsloot for Crime Prevention purpose. While busy with his duties with other members of TRT unit from Johannesburg Central, they received a request from members of the Hawks (DPCI) TOMS who were at Diepsloot SAPS to provide backup in the arrest of wanted suspect. When they arrived at Diepsloot SAPS, he decided to remain outside while others were briefed inside the station. From the station the vehicles proceeded to the Squatter Camp. Along the way his co-workers informed him that there was a suspect who was being traced at the Squatter Camp.

When they arrived at the place where the suspect was, he remained inside the vehicle because it was raining and he did not have a rain coat. He saw the suspect when they brought him to the vehicle. After members of the Hawks and Crime Intelligence who were unknown to him arrested the suspect, they were requested to escort the suspect to Silverton DPCI offices. They escorted the suspect and at Silverton DPCI offices he saw Captain Maluleke who was wearing a Cowboy hat with two unknown African males who were travelling in a white BMW with Zimbabwean registration numbers. Captain Maluleke further said that they were Zimbabwean police who came to take the suspect, referring to the suspect whom they had just arrested at Diepsloot. While they were with the suspect, he told them that some weeks back he was in Zimbabwe attending a funeral of some of the people he committed crime with and also knew they were after him. He was telling them when Captain Maluleke and Zimbabwean police were inside the offices. They were requested to take the suspect to Pretoria Moot SAPS for detention. Before they went to Pretoria Moot SAPS, photos of all members involved in the operation were taken. When they arrived at Pretoria Moot Police station, Captain Maluleke detained the suspect and they then knocked off.

Johannes Mpati Moatshi A61: He will state that in January 2011 he was on duty posted at Diepsloot as a result of xenophobic violence prevalent at the time. At 13h00 on that particular day, he received a call via two ways radio from his commander to go Diepsloot police station. When he arrived with his colleagues he found the commander of Diepsloot Police station who introduced them to Captain Maluleke who was with two males persons and a female. The two male persons and a female were introduced as members of Crime Intelligence. Captain Maluleke informed them that there is a person who has committed serious cases in Zimbabwe and he is very dangerous. Captain Maluleke further said that the suspect was with the informer and had to be arrested. He will further state that they went into Diepsloot where the suspect and the informer were pointed out. After the arrest of the suspect they went to a certain shack where members of Crime Intelligence conducted a search but nothing was found. They were told by Captain Maluleke to transport the suspect to DPCI offices in Silverton. At Silverton Captain Maluleke requested them to book the suspect at Moot Police with the instruction that no visitor is allowed for the suspect. He cannot remember the name of the suspect but he remembers taking photos with the officers from Zimbabwe.

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Sello John Phaswana A64: His statement corroborates that of Avhashoni Desmond Takalani in all material aspects.

Tshatoa Jacob Seletela A63: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana in all material aspects.

Matsobane Silas Mokoatlo A78: His statement corroborates that of Avhashoni Desmond Takalani and that of Sello John Phaswana as well that of Tshatoa Jacob Seletela.

Andries Nxumalo A65: will state that around 11 or 26 January 2011 he was working in Diepsloot as a result of xenophobic violence at that time. He heard over the radio that they were wanted at Diepsloot Police station. When he arrived at the station he found Captain Maluleke, two male officers and one female who were introduced to him as members of Crime Intelligence. He will further state that Captain Maluleke requested them to assist in the arrest of Zimbabwean National who committed serious crimes in Zimbabwe. Together with his colleagues they went to a section in Diepsloot where the suspect was said to reside. The suspect was arrested and taken to DPCI offices in Silverton; he participated in a photo shoot with members of Zimbabwean Police. After the photo shoot, they took the suspect to Moot Police station for detention.

Constable Hosea Tshabalala A83: He will state that on 26/11/2011 he was officially on duty posted at Diepsloot. While still on duty was requested together with his colleagues to assist them in tracing a suspect who was involved in the murder of Zimbabwean Colonel in Zimbabwe. Constable Rikhotso and his female co-worker briefed them that the suspect was with the informer. When they arrived at the exact place, they found the suspect standing in front of the tuck-shop. They arrested him and took him to his room where they found a woman with a small baby. Constable Rikhotso and his female colleague search the room. The suspect was taken to Silverton at the DPCI offices where they found two Zimbabwean police officers. He will further state that the suspect informed him that some few weeks while he was in Zimbabwe he attended the funeral of his colleague who was killed by the Zimbabwean police and the same Zimbabwean police will kill him when he arrive in Zimbabwe. He was requested to detain the suspect at Moot police but he cannot remember the person who made the request.

4.7. STATEMENTS OF CRIME INTELLIGENCE MEMBERS WHO TRACED AND ARRESTED GORDON DUBE AND JOHNSON NYONI.

Masingita Rikhotso A67: He will state that in January 2011 of which he cannot remember the exact date he went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived he found Constable Sombhane who was working at the CIAC office. Constable Sombhane gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. He came back to his office and organized with his contacts to look for Gordon Dube. It took two weeks for the contact to trace the suspect. He will further state that his contact informed him that he found Gordon Dube and together with his colleagues they went to Thembisa in order to apprehend the suspect. He was informed that the suspect will be

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coming since he wanted to buy bullets from someone. He will further state that while they were in Thembisa and they managed to spot the suspect. When he moved they pursued him until they arrested him in Diepsloot. They found the suspect in possession of an unlicensed firearm. He saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from the ballistics. The suspect was taken to Wierdabrug for detention. Again in January 2011 he received information from Captain Maluleke who requested him to look for John Nyoni. He then tasked his informer again to assist in the arrest of Nyoni. On 26/11/2011 he went to Diepsloot having organized with his Contact to arrest John Nyoni. When he arrived the Contact pointed out the suspect and he was arrested. After they arrested John Nyoni, his house was searched but nothing was found. They took the suspect to Silverton DPCI offices. They were assisted by members of TRT. He will further state that he participated in the photo shoot with the Zimbabwean police. He also heard Captain Maluleke requesting members of the TRT to take the suspect to Mool Police station.

Platinah Mokgobu A69: She will state that she is employed by the South African Police Services stationed at Crime Intelligence in Pretoria with a rank of Constable. On 12/01/2011 while in the office they received information from their Contact/Informer and he tipped them off about a crime that was going to take place at Diepsloot. They then proceeded there with a backup of members from Ivory Park Police Station where they effected an arrest on Gordon Dube at Diepsloot.

In January 2011 they received information from CIAC at Wierdeburch regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect has murdered a police officer in Zimbabwe.

They then tasked their Contact/Informer to look for the suspect, who did and the suspect was arrested. After the arrest of John Nyoni, they all proceeded to the Hawks offices where they gathered together for a photo shoot. Captain Maluleke exchanged the taking of photos with the Zimbabwean police. The photo of the suspect was also taken and the exhibit which is a firearm was also photographed. After the photo shoot she went to the shop, but when she came back she was told that General Dramat was with Colonel McIntosh and he had just addressed the people in her absence. She felt that she missed out on the speech of General Dramat but her colleagues told her that he was just congratulating them for a job well done.

Superintendent Ncube from Zimbabwe who was wearing black shirt and spectacles told us that he will be sending us letters of congratulation from Zimbabwe. She still recalls that later they were called by Brigadier Britz from Crime Intelligence Provincial office, and he showed them an appreciation letter from Zimbabwean government. He told them that they would be called by Provincial Commissioner Mzwandile Petros to meet with them as a result of their good work. She does not know what happened to John Nyoni thereafter.

Emmanuel Dinizulu Mkasibe A68: His statement corroborates that of Platinah Mokgobu in all material aspects. He will state further that shortly after the photos were taken, he saw General Dramat of the Hawks. General Dramat was with the spokesperson of the Hawks known to him as Colonel McIntosh Polelo. They then

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RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

Removal 3

gathered together and Captain Maluleke introduced General Dramat and the spokesperson. General Dramat addressed and thanked them for arresting the suspect. After he said that he left and Captain Maluleke told us that he was organizing a celebration braai. While they were busy enjoying themselves, a lady working at the Hawks offices with Captain Maluleke came and joined them. She wanted the meat to take home because there was too much meat. She was requested to download the photos from the camera by Captain Maluleke.

He will state further that he then decided to follow her to the office. When she downloaded the photos he requested her to print the photos for him. She agreed and printed many photos which he took home and still have them even now.

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Constable Polelo Fortune Mngwenya A75: He will state under oath that on the 26/01/2011 he was called by his colleagues after the arrest of Johnson Nyoni to join them at DPCI offices in Silverton for a braai. He will further state that when he arrived he found Zimbabwean police and some of his colleagues participating in a photo shoot. Shortly after the photo shoot Lt General Dramat came and thanked them for the job well done.

Statement of Brigadier A G Britz of Crime Intelligence A79: He will state that During January and February 2011, Constable Rikhotso and his female colleague visited his office and informed him that they arrested two Zimbabweans who were involved in a spate of arm robberies and recovered a firearm. He congratulated them without enquiring the details of the case. In March 2011 he received a letter which was addressed to Col Ntleni from CID Provincial Headquarters in Zimbabwe Bulawayo-Zimbabwe. A copy of the letter is attached to his statement. He then arranged with Col Ntleni to send the officers to the next Crime Intelligence Provincial Management meeting in order for them to be congratulated. After the management meeting he also wrote a letter to Lt General Toka's signature to the Provincial Commissioner in order for him to congratulate the members. On 15/07/2011 he received four letters from the Provincial Commissioner thanking members for good work. He will further state that he had no prior knowledge that the suspects arrested were wanted in connection with the murder of Zimbabwean police.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

Avhasei Witness Rambuda A72: He will state that in January 2011 he was working Diepsloot as a Detective. There were three suspects who were arrested after they were involved in the shooting incident with the police. They recovered a firearm which was booked into SAPS 13 and received exhibit number SAPS 13/31/2011. He was involved in the charging of the suspects and they were attending court at Atteridgeville. After some few days he received a call from Captain Maluleke of the Hawks asking him to go to Ballistic Pretoria and collect the firearm as he had already made arrangement with them. He collected the firearm and handed it Captain Maluleke. Captain Maluleke told him that he has a case he is investigation against one of the suspects. He informed him that the firearm belongs to Zimbabwe. He typed a letter a letter on his computer acknowledging the firearm but he does not remember where he put the letter.

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RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

He will further state that Captain Maluleke told him that he had made an arrangement with the prosecutor at Atteridgeville to withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

Warrant Officer Isaac Dlamini A70: He will state that in January 2011 docket Diepsloot Cas 93/01/2011 was assigned to him for further investigation. The docket had three suspect arrested for possession of unlicensed firearm and ammunition. The names of the suspects were Menzi Dube, God Dube and Sidingumunzi Dumani. He received a call from "Cowboy" Maluleke of the Hawks to hand the Case dockets Diepsloot Cas 93/01/2011 to his office in Silverton. He said the docket had to be investigated together with other dockets wherein God Dube is a suspect. He further said that the firearm which is an exhibit in his docket was used to kill a senior officer in Zimbabwe. Captain Maluleke took the docket and gave them acknowledgement of receipt.

He will further state that Captain Cowboy in the presence of Constable Rambuda told him that he will facilitate the release of the suspect from prison and he will talk to the Prosecutor to withdraw the case. After sometimes seeing that the docket was under his name, he opened a duplicate and sent it to the prosecutor. The prosecutor decided to decline to prosecute and the duplicate docket was filed.

Lean Meyer A73: He will state that he was investigating several cases wherein Godi Dube was a suspect. The cases were as follows, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Godi Dube was also wanted in Zimbabwe. According to Maluleke he was also wanted for murder as per Bulawayo CR 438/09/2010. He will further state that he booked out suspect Godi Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels.

Sindy Daisy Dorcus Sombhane A74: She will state that during 2010 and 2011 she was based at Wierdabrug attached to Crime Intelligence unit. During 2010 she gave Constable Rikhotso a list of wanted suspects in Wierdabrug. She also met Captain Maluleke at Wierdabrug who told her that he is looking for a suspect known as Godi Dube. She contacted Constable Rikhotso and informed him that Captain Maluleke was at Wierdabrug inquiring about Godi Dube. She gave him the contact numbers of Captain Maluleke.

She will further state that on the 11/01/2011 she saw the name of Godi Dube on the cell Register and decided to call Constable Rikhotso. Constable Rikhotso confirmed that he arrested Godi Dube the previous night (11/01/2011). She went to the cells and interviewed Godi Dube who said he would get a lawyer because the police assaulted him.

5. DOCUMENTARY EVIDENCE ACQUIRED FROM VARIOUS POLICE STATIONS

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5.1.1. EXTRACTS FROM OCCURRENCE BOOKS & SAPS 14 REGISTERS

The investigation at Orlando Police Station uncovered the following:

Specific reference to OB 276 to 279 (A8): The entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma.

Specific Reference to OB 429 (A9): Entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda and Shepard Chuma to Beit Bridge.

SAPS 14 (A10) : The cell register dated 2010/11/05 to 2010/11/08 indicates that the following suspects were charged and detained, Dumisani Witness Ndeya, Nelson Ndlovu, Maqhabane Sibanda, Shepard Chuma. The reason for detention of the suspects as per register is stated as 'illegal Immigrants'. The entry was made by Sergeant Thomas Pixane Selage who also later confirmed this in a sworn statement.

The investigation at Alexandra Police Station uncovered the following:

OB entry 22/11/10 (A57/1): The entry made on 22/11/2010 shows the booking of Prichard Chuma by Captain Nkosi. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case.

OB entry 23/11/2010 (A57/2): The entry dated 23/08/2010 shows the booking out of Prichard Chuma by Warrant Officer Selepe.

The investigation at Silverton Police Station uncovered the following:

OB entry 23/11/12 A58/1: Warrant Officer Selepe booked in Prichard Chuma at Silverton Police station with Bulawayo case number.

OB entry 24/11/2012 A58/2: Warrant officer Selepe booked out Chuma to Beit Bridge. However Captain Maluleke also signed, acknowledging the release of Prichard Chuma into his hands/custody.

The investigation at Pretoria Moot Police station uncovered the following:

OB entry 26/01/11 (A66/1): Warrant Officer Johannes Mpali Moatshi booked in Johnson Nyoni by the instruction of Captain Maluleke for Fraud.

OB entry 28/01/11 (A66/2): Captain Maluleke booked out Johnson Nyoni to Beit Bridge for Fraud.

SAPS 14: Captain Maluleke appended his signature on the entry and it shows that the release of Johnson Nyoni to Captain Maluleke was for extradition purpose.

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The investigation at Wierdabrug Police Station uncovered the following;

OB entry 12/01/12 (A71/1): Gordon Dube, Andrew Dube, Dumani Stimusy were detained for possession of unlicensed firearm. The same firearm was found to belong to the murdered Zimbabwean Police Officer.

Body Receipts SAPS 216 (A71/2): They show that Gordon Dube, Andrew Dube and Dumani Stimusy were received from court on 14/01/2011 together but on 28/01/2011 Gordon Dube was not amongst the other suspects. Pretoria Prison records show that Dube was release on the 28th January 2013 to Constable Meyer of Wierdabrug Police station.

Copies of case dockets linking Gordon Dube, which were discontinued after Gordon Dube's deportation (B20).

Diepsloot Cas 93/01/2011:

The case docket was opened after Gordon Dube was found in possession of an unlicensed firearm. The original docket was handed to Captain Maluleke and a duplicate docket had to be constructed without some of the statements in the original docket. The suspect Gordon Dube was attending court in terms of admission detail report of Pretoria Central Correctional Services and the body receipt form both filed as per A84/1 and A84/2 respectively.

Wierdabrug Cas 531/12/2010:

The case docket was opened after Gordon Dube allegedly robbed a certain business at Olievenhoutbosch where a shot was fired. An empty cartridge was successfully linked with a firearm which Gordon Dube was found in possession off in Diepsloot Cas 93/01/2011. There is also a copy of a statement made by Captain Maluleke indicating that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 220/02/2010:

The case docket was opened after Gordon Dube allegedly murdered a person at Serebeti area. The projectile found in the body of the deceased was linked to the firearm recovered from Gordon Dube during his arrest as per Diepsloot Cas 93/01/2011. Gordon Dube was still attending court with the next court date set for 30/03/2011. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

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Wierdabrug Cas 43/10/2010:

This murder case docket links Gordon Dube through cell records and ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life Imprisonment.

Wierdabrug Cas 147/10/2010

This attempted murder docket links through ballistic result. Captain Maluleke also submitted a statement in which he indicated that because of the seriousness of the cases committed by Gordon Dube in Zimbabwe, Dube was handed over to Zimbabwean Government and he was sentenced to life imprisonment.

Wierdabrug Cas 1022/12/2010:

No docket or copies could be found regarding this case.

Wierdabrug Cas 310/10/2010:

This is house robbery case linked to Gordon.

5.2 DOCUMETARY EVIDENCE ACQUIRED FROM DPCI OFFICES.

Success report dated 04/02/2011 (A82/3): The report was addressed to General Dramat, General Hlatshwayo and General Toka with a heading that reads, "CONSOLIDATED SUCCESS REPORT: MOST WANTED FUGITIVE: WANTED FOR MURDER AND ROBBERY: DPCI TOMS REF: 3/12/2010: AND ZIMBABWE (BULAWAYO CR 348/09/2010): WITNESS DUMISANI NKOSI@NDEYA: ZIMBABWEAN NATIONALS AND OTHERS.

The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence.

Success report dated 11/11/2013 (A82/1-82/2): The report bears reference number 26/02/1 and again addressed to Deputy National Commissioner DPCI. The person to whom enquiries must be directed is Captain Maluleke whereas the signatory is Col P J Selundu. The report further stated the arrest of Dumisani Witness Vundla @ Ndeya and Shepard Chuma.

Overtime and Itineraries of Captain Maluleke (B18): On 08/11/2010 went to Beit Bridge (Limpopo) for investigation and claimed overtime. On 24/11/2010 he went to Beit Bridge and also claimed overtime. On 28/01/2011 he went to Beit Bridge and also claimed overtime. All this dates corresponds with cellphone records and OB entries indicating the dates in which the suspects were booked out from the stations.

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5.3 EVIDENCE ACQUIRED FROM CAPTAIN MALULEKE'S SEIZED LAPTOP (A87).

Success report ref: 26/2/1 and 14/02/01: They were generated in Captain Maluleke's laptop before being signed by Col L Verster and forwarded to General Dramat. The report recovered from the computer has a different reference number but same content. Report 14/02/01 has reference 0627239-8/5

Letter to Diepsloot Station Commander: The recovered letter states that the firearm which was found in Gordon Dube's possession and handed to Captain Maluleke after ballistic examination was taken to Zimbabwe permanently.

Emails by Captain Maluleke: He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. He sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects..

Photos: More than 70 photos were found, the majority of them relate to the operation involving Zimbabwean Nationals. Zimbabwean police appear on the photos and the white BMW with clear Zimbabwean registration number.

Letter to Home Affairs dated 08/11/2010: The letter was addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Even though the letter is dated 08/11/2010, it was generated in November 2011, shortly after the news about illegal deportation of Zimbabwean nationals hit the media.

Letter to stakeholders dated 20/08/2012: The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes.

Documents regarding Bongani Moyo's case: This case is separate from the events that led to the arrest and deportation of the Zimbabwean Nationals into the hands of Zimbabwean authority. However it is a clear case of return of favor by Zimbabwean authorities to South Africa. In terms of the documents retrieved, Bongani Moyo escaped from Boksburg prison on 2011/03/28, a month and half after South Africa deported illegally the Zimbabwean nationals who were wanted by Zimbabwean authorities. An amount of R50 000 rewards was also provided for any information that could lead to the arrest of Moyo. Captain Maluleke stated that his informer told him that Moyo was on his way to cross the border in South Africa after being shot by Zimbabwean police. According to the formal statement of Captain Maluleke, he arrested Moyo on the 13/05/2011 after he was found in the vehicle that crossed the border into South Africa. The other information retrieved provides contrary account of what happened. In a letter he states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police.

Statement of Bongani Moyo: he will state under oath that in May 2011 he was in Zimbabwe Bulawayo busy speaking over the cellphone when Zimbabwean police arrived at his house. After identifying him they assaulted him and handcuffed him. They put him in the bakkie and drove to the bush, where they ordered him to lie down. They

then shot him on both knees. He was then taken to Central Hospital in Zimbabwe where he was treated before released to the hands of the Zimbabwean Police. After being released he was transported to Beit Bridge by seven Zimbabwean police. He will further state that they were travelling in a white Toyota Fortuner and he was handed to the South African Police at Beit Bridge.

5.4 DOCUMENTARY EVIDENCE FROM HOME AFFAIRS

Warrant of Detention of Illegal Foreigners (BI-1725) – This document was produced by the SAPS as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the docket does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist. It was also uncovered that the BI-1725 used was discontinued in 2008 according to Home Affairs and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on both documents clearly shows that whosoever completed the document used the old form already completed and deleted affiliated information to put the information of the three foreign nationals. The handwriting expert in her findings has indicated that the signature in each document does not resemble the sampled signature provided by members of Home Affairs.

Notification of The Deportation of an Illegal Foreigner (DHA-1689) documents were produced by SAPS as proof that the Nelson Ndlovu, Shepard Chuma and Maqhawe Sibanda were deported through Beit Bridge Border. However the form has been wrongly stamped and does not have finger prints of the deportee as required. The stamp number 20 belonging to Beit Bridge was used and such stamp is not for that purpose. The stamp is individualized and belongs to Immigration Officer Kobelo Margret Mohlahlo who on the day in which the stamp was used was off duty and the stamp was locked in the safe, she is the only person in possession of the key to the safe.

Beit Bridge Duty Roster – This is a duty register used by Immigration Officers at Beit Bridge. The register confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on 7th and 8th of November 2010.

Beit Bridge Movement data: The data entails information pertaining to the entry and exit of people who were identified by Colonel Madilonga as members of Zimbabwean police who approached him with a request to see Lt General Dramat.

Expert report on the Home Affairs Documents A81/1 and A81/2: The documents which were handed by Col Basi which are Notification of the deportation of the Illegal Foreigner and Warrant of Detention were sent to the forensic laboratory for analysis.

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5.5 EVIDENCE IN TERMS OF SECTION 205 OF THE CRIMINAL PROCEDURE ACT.

CELLPHONE RECORD OF MAJOR GENERAL SIBIYA (0725953168) AND (0724798484)

Reason for 205 application	Findings
To test the version of the witnesses who alleged to have seen Major General Sibiya at the crime scene	Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence.

CELLPHONE RECORD OF LT GENERAL DRAMAT (0825515311)

Reason for 205 application	Findings
To verify whether he had interaction with the Zimbabwean Authority regarding the arrests of Zimbabwean Nationals. To clarify as alleged by the witnesses whether he received Zimbabwean police in relation to the murder case of a senior officer in Zimbabwe	The entire cellphone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence.

CELLPHONE RECORD OF MAJOR GENERAL HLATSWAYO (0828051210)

Reason for 205 application	Findings
To test the version that Captain Maluleke was reporting direct to Major General Hlatshwayo regarding cross border issues. During the interview with the said General she denied having known about the Zimbabwean police and requested us to do apply for 205 in order to clear her name.	Her interaction with Captain Maluleke confirms her version that she did not know anything about the arrest and deportations of Zimbabwean Nationals. She was never at the scene or at Fourways Shopping center where the alleged planning took place.

CELLPHONE RECORD OF LT GENERAL LEBEYA (0825751899)

Reason for 205 application	Findings
To verify the automated SMS send by Major General Sibiya and whether when he signed on one of the success report he had more information about the operation.	The evidence shows that he did not know anything about the operation that led to the arrest of the Zimbabwean Nationals.

CELLPHONE RECORD OF CAPTAIN MALULEKE (082-7729518)

Reason for 205 application	Findings
To test the version of the witnesses who alleged that Captain Maluleke led the operations that led to the arrest of Zimbabwean Nationals	There is prima facie case against Captain Maluleke.

CELLPHONE RECORD OF CAPTAIN NKOSI, W/O MAKOE AND CONSTABLE RADEBE (0834373227), (0723050697), (0824198303) AND (0737313808).

Reason for 205 application	Findings
To test the version of the witnesses who alleged that they were at the crime scenes and they took money and assaulted the Zimbabwean Nationals.	The record confirms that they were at the scene even though the allegation of theft is not corroborated

CELLPHONE RECORD OF LT COL MADILONGA (078 520 9741) AND (0713550548)

Reason for 205 application	Findings
To test his version in which he alleged that he received a call from Captain Maluleke on 08/11/2010 regarding the deportation of Zimbabwean Nationals	Their interaction confirms the version of Madilonga.

5.6 STATEMENTS OF SENIOR MEMBERS OF SAPS AND SECRETARIAT

Lt General Mkhwanazi A99: He will state that in late 2011 when he was an acting National Commissioner of South African Police Services, he heard on the news when Minister Radebe was commenting about the alleged death of Zimbabwean Citizens as a result of being handed to the Zimbabwean Authorities by South African Police Services. He immediately contacted the Head of the DPCI Lt General Dramat and inquired about the issue. Lt General Dramat confirmed that members of his unit did transport the Zimbabwean Citizens but as illegal immigrants. He then summoned Lt General Dramat to his office. Lt General Dramat came with an officer who was introduced to him as "Cowboy". He was informed that Cowboy was in charge of the group that transported the Zimbabwean Citizens. Cowboy said that he was investigating a case of ATM bombing which led him to the Zimbabwean Citizens. After he realized they were not linked to the case he decided to transport them to Beit Bridge because they did not have valid documents. Cowboy further said that he got valid deportation documents from Home Affairs before he could transport them. He will further state that he could not understand why Cowboy did not hand over the immigrants to Home Affairs. When he asked whether it was necessary to transport illegal immigrants, Lt General Dramat could not offer any explanation.

Lt General Lebeya A97: He will state that when he commented on the success report regarding the Zimbabwean Nationals arrested, he only did it as a practice. He will further state that Major General Sibiba has an automated messaging which includes his number wherein automated success report or information is sent. He cannot remember what all the messages were about, which he received on 05/11/2010.

Ms. Jennifer Irish-Qhobosheane A100: She will state that she is the Head of the Civilian Secretariat and the Secretary of Police. She became aware of the allegations

of renditions on 22/10/2011 when she saw an article in a Sunday Times newspaper entitled, "journey to death in an unmarked car". The Minister requested a detailed response from the DPCI to be submitted to him in writing. She received two official responses in a form of information notes to the Minister. Based on the different information supplied to the Minister of Police, the Minister felt that the matter needed further inquiry to establish whether there is any evidence that the SAPS might have violated international laws and procedures and/or South African laws.

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Warning Statement of Lt General Dramat A94/1: He will state that he is the Deputy National Commissioner of the South African Police Services. He unequivocally point out that at no stage during his correct role as the National Head of the DPCI did he ever personally authorize the unlawful and intentional depriving of a person liberty, or movement, and/or his custodians of control on any basis whatsoever. He will further state that never authorized anyone or sanctioned the kidnapping any of the Zimbabwean Nationals. He knows of no action that he took or authorize which was aimed at defeating the administration of Justice.

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Warning Statement of Major General Sibiya A101: He will state that he was never appointed as the head of TOMS. However he received reports from his members regarding successes as routine. He was never part of the operation that arrested the Zimbabwean National who was wanted in connection with the murder of Zimbabwean Colonel in Zimbabwe.

Warning statement of Lt Col Mahlanu Maluleke A88: He exercised his right to remain silent.

5.7 STATEMENT ON HOW DIEPSLOOT Cas 390/07/2011 WAS INVESTIGATED

A100 in original

Innocent Humbulani Khuba A102: He will state that he is a member of Independent Police Investigative Directorate base in Limpopo. On 23 October 2012 he received a case docket from Mr. Sesoko and appointment letter to conduct investigation in all cases of alleged assault against Major General Sibiya. The docket received is Diepsloot Cas 390/07/2012. He also received a copy of the letter which was sent to Mr Sesoko by Major General Sibiya complaining about the conduct of North West Task Team which was tasked to investigate cases against him including Diepsloot Cas 390/07/2012. He was informed by Mr Sesoko who was the National head of IPID of investigation that the reason he was appointed to be the new Task Team Leader was that Major General Sibiya complained against the North West Task Team. He was advised to assemble a team that would assist me in the investigation of these cases. The team assembled comprised of the following individuals, Mr Kenneth Ratshitali, Mr. L Mapheltho, Mr N Mulaudzi and Mr T Mashaphu who are all investigators from Limpopo Provincial office. They worked under his guidance and took instructions directly from him as the team leader.

Upon his perusal of Diepsloot Cas 390/07/2012 and other accompanying documents, he discovered that the Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by Lt General Dramat from Civilian Secretariat. The case was reported as result of parliamentary

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question by Cope Member of Parliament and an article by Sunday Times. The docket had following statements obtained by members of South African Police Services, the statement of Shepard Chuma, Maghawe Sibanda, Nelson Ndlovu, Bongani Henry Yende, Petros Jawuke, Desmond Campbell, Alfred Ndobe, Andrew Mark Sampson, Reason Mhlawumbe Sibanda, Rachael Ncube, Brightness Nka Ncube, Madala Bhekisisa Nyoni and Sibongile Mpofu. There were also copies of Occurrence Book and cell Registers from Orlando police station regarding the detention and booking out of the following individuals, Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma. There were also four Detention Warrants, four Deportations Notifications and a copy of Witness Ndeya's death certificate.

He took over the case for further investigation in terms of Section 206(6) of the Constitution of the Republic of South Africa which provides that, on receipt of a complaint lodged by a Provincial Executive, an Independent Complaints body established by the national legislation must investigate any alleged misconduct or offences allegedly committed by members of SAPS. It was also in terms of Section 28 (1) (f) and (h) of the Independent Police Investigative Directorate Act 1 of 2011 that the decision to investigate the case was made.

On 13 November 2012, a letter requesting an interview with Home Affairs officials and documents regarding the movement of people at Musina Beit Bridge port of entry was e-mailed to Mr. Ndlovu of the Deportation section at Home Affairs Head Office in Pretoria. On 08/02/2013 the permission was granted after he had a meeting with Mr. M Mathews, the Chief Director responsible for deportation and mending of Ports of Entry. Prior to the interview with Home Affairs officials, he visited Orlando Police station on 10/01/2013 and interviewed Brigadier Zangwa and other members stationed at Orlando. He received copies of the Occurrence Book and cell registers include a color copy of the Sunday Newspaper regarding the incident.

On 15/02/2013 he went to Home Affairs Department in Pretoria and interview Peter Ndwardwe and Nolwandle Qaba about the incident and process involved in the deportation of undocumented persons or illegal immigrants. He received a copy of DZP policy from Mr Ndwardwe and the Immigration Act. On 21/02/2013 he went to Soweto and obtained the statements of the following individuals, Johannes L. Broodryk, Patiswa Skosana and Job Jackson. Job Jackson who is the Manager of Lindela Holding facility for illegal immigrants gave him a printout of all people who were deported during the DZP period which covers the time of the alleged deportation of the Zimbabwean Nationals. The list is filed as A34 in the docket.

On 25/02/2013 he went to Beit Bridge and obtained a statement of Peter Eiberg. He also gave him an example used copy of Notice of Deportation which is filed as A38 and Duty Rooster for the period 5 November 2010 to 13 November 2010 which is filed as per A40. On 26/02/2013 he went to Turfloop and obtained statement of Magret Mohlahlo, an immigration officer whose stamp was allegedly used in the documents that resulted in deportation of Zimbabwean Nationals.

During the investigation of the case he visited the office of Lt General Dramat on 07/03/2013 and a meeting was held between Lt General Dramat and him. He will further state that at that stage the investigation had not uncovered any evidence relating to the involvement of Lt General Dramat or any other senior officer of DPCI. The meeting was held at Lt General Dramat's office which is located at Silverton.

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During the meeting, Lt General Dramat was informed about the allegation of kidnapping and assault leveled against members of DCPCI most especially Captain Maluleke who is now a Lt Colonel. He said that he had sanctioned internal investigation in the matter and the outcome of the investigation cleared Lt Colonel Maluleke of any wrong doing. When I asked him whether they were any Zimbabwean police who visited the DPCI offices, he said that there were no Zimbabwean police who came into the country regarding the alleged matter and that all Zimbabwean Nationals were deported through Home Affairs for being illegal immigrants. Lt General Dramat was requested to provide statement with regard to the formation of TOMS, his knowledge about the DZP, source documents that informed the internal investigation, his report to parliament and knowledge about the involvement of Zimbabwean police in the operation of TOMS. He informed me that the request should be forwarded to Col Basi and he would hand all the necessary documents including his sworn statement to him.

On 07/03/2013, shortly after the meeting he generated and emailed a letter to Col Basi. On 19/04/2013 he met with Col Basi in front of the Interpol building on Pretorius Street in Pretoria. He handed to him a brown envelope containing following documents, cell phone records of Captain Maluleke, Lt Col Neethling and Major General Sibiya. There were also copies of sworn statements of, Willem Carel Stephenus Vorster, Andree Neethling, Captain Maluleke, Vincent Selofole, Major General Sibiya, Warrant Officer Makoe, Ndanduleni Madilonga and Warrant Officer Rodgers Nthlamu. Attached to the copy of the statement of Warrant Officer Nthlamu were copies of the following documents, Warrant of Detention (BI-1725) for the following individuals, Dumisani Witness Ndeya, Shepard Tshuma, Nelson Ndlovu and Maqhawe Sibanda. There were also four Notifications of the Deportation of an Illegal Foreigner (DHA-1689) for the following individuals, Nelson Ndlovu, Shepherd Chuma, Maqhawe Sibanda and Witness Ndeya. The Warrant of Detention and Notification of the Deportation forms attached to Warrant Officer Nthlamu statement appeared to be similar to the one received from Secretariat which were already part of the docket. The Warrants of Detentions and Notifications of Deportation received from Warrant Officer Nthlamu were the one sent to the Forensic Lab for analysis on 10/06/2013 and 21/08/2013. The documents given to him by Col Basi also include search result report from Interpol indicating that Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma were not in the wanted list. However there was no statement of Lt General Dramat in the envelope handed to him. The documents handed to him are filed in the docket as per A41-A50.

In April 2013 he called Constable Radebe and Warrant Officer Makoe for the purpose of obtaining their warning statements. He never compelled anyone to implicate Senior Members of the DPCI. However, he informed them that they can arrange a service of a lawyer in order for them to be guided during the process. Shortly after speaking with them he received a call from Lt Col Maluleke who told me that he was not supposed to request warning statements from his people because on the day he arrested Zimbabwean Nationals he was the lead man and Constable Radebe and Warrant Officer Makoe were taking instructions from him. He informed him that he cannot answer on their behalf and that when his turn comes he will be informed accordingly. He will further state that on the day set for interview none of the above members came for the interview.

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RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

On 08/04/2013 he interviewed Ndanduleni Madilonga and obtained his statement. On 15/04/2012 he went to Beil Bridge and interview Col Radzilani and obtained her statement. The following day he interviewed Brigadier Makushu in Polokwane and obtained his statement.

On 27/06/2013 he interviewed Lt Col Neethling in his office and obtained his statement. On 29/06/2013 he met with Warrant Officer Selepe at East gate in Johannesburg and obtained his statement. After being provided with information regarding the arrest and the transportation of Prichard Chuma to the boarder, Silverton and Alexander original SAPS 10 (occurrence books) were uplifted. Copies of the SAPS 10 are filled in the docket as per A57 and A58.

On 10/07/2013 he met with Ms. L Verster at Protea-Coin for the interview. She gave information regarding the success reports resulting from the arrest of Witness Ndeya and other Zimbabwean Nationals. She also assisted him by phoning Supply Chain of DPCI and obtained the serial number of Captain Maluleke's laptop which he used during 2010 and 2011. On the same day he generated a letter to Col Mabuyela who was assigned by Brigadier Kadwa to assist him with documents or items needed from the DPCI offices for the purpose of investigation. He hand-delivered the letter to Col Mabuyela on 11/07/2013, requesting the following things, Dell Laptop with serial number CNOJF242486436BL3424 which was assigned to Lt Col Maluleke, approved overtime claims for Lt Col Maluleke for the following period 01/11/2010-31/01/2011, approved trip itineraries for Lt Col Maluleke for the period 01/11/2010-31/01/2011, Telkom call record for Lt Col Maluleke for the period 01/11/2010-31/03/2011, record regarding the disposal and if not yet disposed, the handset used by Lt Col Maluleke, record of successes of operations conducted between 01/11/2010-31/03/2011 and logbooks of vehicles used by Lt Col Maluleke for the period 01/11/2010-28/02/2011. On 12/07/2013 he went to meet with Col Mabuyela and he received success reports which are filed as per A82/1-A83/3.

The success report filed as per A82/3 contains names of officials who assisted in the arrest of Gordon Dube who are members of TRT and Crime Intelligence. On 16/07/2013 he went to Johannesburg Central Police Station and obtained the statements of members of TRT. One of the members by the name of Avhashoni Desmond Takalani (A62/2) had photos at home of Johnson Nyoni and Zimbabwean Police. He went to his house on the same day and collected the two photos which are filed as per A62/1. On 18/07/2013, he emailed a letter to the Commander of Crime Intelligent Pretoria Central, Col Ntenti requesting interview with his members who are mentioned in success report dated 04/02/2011 (A82/3). On 25/07/2013 he went to Crime Intelligence offices in Pretoria and obtained the statements of the members. The interview with the members also revealed that the arrest of Gordon Dube and Johnson Nyoni was also known by Brigadier Britz. On 16/07/2013 a letter was generated and emailed to Brigadier Britz requesting a meeting for the purpose of interview and obtaining statement. He interviewed Brigadier Britz on 26/07/2013 and after the interview Brigadier Britz promised to write his own statement. He collected Brigadier Britz statement from his office on 22/08/2013 which is situated at Old Stock Exchange building in Johannesburg. He also received Report number GO-D-004-D which is admission details of Gordon Dube from Correctional Services which is filed as per A84/3 and SAPS 206 (body receipts) filed as per A81-A82.

He also discovered that Gordon Dube was facing number of charges in South Africa including murder. Statements of Isaac Dlamini and Avhashoni Rambau were obtained

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in connection with Diepsloot Cas 93/01/2011 which they were investigating (A70 and A72). Original SAP 10 (Occurrence Book) was uplifted from Wierdabrug Police Station and copies are filed as per A71. Statement of Constable Meyer from Wierdabrug was obtained in relation to cases he was investigating against Gordon Dube and how he booked him out of prison and handed him to Captain Maluleke to be transported to Beit Bridge. He also obtained copies of the following dockets which are cases against Gordon Dube Diepsloot Cas 93/01/2011, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 310/10/2010, Wierdabrug Cas 431/10/2010 and Wierdabrug Cas 531/12/2010. All the copies of the docket are filed under B22 (arch file).

On 16/07/2013, he received a Dell Laptop from Col Mabuyela and Warrant Officer Danie bearing serial number CNJF242B6436BL3424. The Laptop was handed to Precision Forensics on 31/07/2013 at 18h00. The report from Precision Forensic was received on 22/08/2013 and is filed as per A89 (arch file).

In October 2013 he approached the Head of DPCI accompanied by Mr. Sesoko who was an Acting Head of Investigation for IPID requested his warning statement. He was advised to seek an assistance of a lawyer for the purpose of guiding him before the warning statements is obtained. He agreed and informed them that he will telephonically contact Mr. Khuba regarding the suitable date. He will further state that he received a call from a person who introduced himself to him as Adv. P Seleka representing Lt General Dramat. He requested questions in writing and summary of the allegation which was e-mailed to him. After he received the questions, he was informed via e-mail that Lt General Dramat is represented by a new company and they will continue to liaise with him. He emailed the questions and after two weeks he received a copy of his statement and is file as per A94.

On 22/10/2013 he called Lt General Lebeya and requested an interview with regarding Renditions as his name appears on one of the success reports. On 23/10/2013 he met with Lt Général Lebeya and interviewed him about the deportation of Zimbabwean Nationals in connection with the death of senior officer in Zimbabwe. After the interview he requested that he send questions in writing and that he would be able to respond to them. The questions were drafted and emailed to him the same day. On 07/11/2013 he received a call from his office to collect his statement including accompanying documents. The following documents were attached on his statement, copy of e-mail regarding documents requested from DPCI, mandate of TOMS, unsigned success report regarding Witness Ndeya and other success reports not related to the Diepsloot Cas 390/07/2012.

In November 2013 he engaged Captain Boonstra to arrange for a meeting between him and the two officers, Constable Radebe and Warrant Officer Makoe. Captain Boonstra informed him telephonically that he informed Warrant Officer Makoe and that Constable Radebe was attending training at Hamanskraal. He tried to contact him on 0737313808 for a warning statement but he was not reachable. In late November 2013, he again requested Captain Boonstra to assist but he informed him that the members were informed and they do not want to cooperate.

On 02 December 2013 he requested Principal Investigator Mr Mdunge based at East London IPID office to obtain a statement of Bongani Moyo who is serving his sentence at Kokstad Correctional Services A98. On 21/12/2013 he requested Mandla Mahlangu who is a Principal Investigator based in Gauteng IPID office to obtain a statement of a former acting National Commissioner Lt General Mkhwanazi A99. On 17/02/2014 he obtained a statement of the Secretary of Police Ms J Irish-Qhobosheane and is filed as

per A100 with the attachments of her internal inquiry. I also obtained the results of Lt Col Madilonga's statement analysis from Precision Forensics.

During the investigation of the case no one was either intimidated or assaulted. He never requested or forced any witness to implicate any person.

6. ANALYSIS OF EVIDENCE AND FINDINGS.

The operation carried out by TOMS to arrest Zimbabwean foreign nationals in Diepsloot in connection with the murder of Zimbabwean police Colonel was led by Captain M.L. Maluleke also known as Cowboy.

Captain Maluleke was appointed as the head of cross border desk at the DPCI office to assist in the coordination and apprehending of cross border crimes fugitives. In this responsibility he mends the desk alone thereby forging very strong ties with the law enforcement agencies of the neighboring countries such as Zimbabwe and Mozambique. His unique role and the fact that he was based at DPCI head office gave him the respect that even officers at the ranks of colonels and captains carried out his request without questions. This is corroborated by Lt Colonel Neethling who stated that he was requested by Captain Maluleke to assist in both tracing of the Zimbabwean Nationals and providing escort for their transportation to Beit Bridge border. He further stated that he felt obligated to assist because Captain Maluleke was based at DPCI head office and responsible for Cross border desk. During the interview with Ms. Leonie Verster who was the direct commander of Captain Maluleke, she stated that Captain Maluleke carried out his responsibility on cross border desk without supervision from her and she did not know much of what was happening. Captain Boonstra who worked under the command of Lt Col Neethling also stated that the operation which led to the arrest of Zimbabwean Nationals was led by Captain Maluleke. He inquired about the case number which the Zimbabwean nationals were sought for and a Bulawayo case number was given to him. Captain Nkosi corroborates many of Gauteng TOMS members that his participation in the operation was as a result of Captain Maluleke's request.

However the important question to ask is whether a crime was committed in the arrest and deportation of Zimbabwean national. The documents sourced from Interpol clearly outline the procedures which are to be followed by any law enforcement agency of any country if they want suspect/s who are in another country. During the interview with Warrant Officer Kgomo of Interpol coupled with the search done on Interpol database, it was established that procedures were not followed since the Zimbabwean Nationals arrested were not on the list of wanted fugitives and no warrants were issued in their names. The following evidences were found and can be analyzed as follows,

- The arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma on 05/11/2010.

The operation that led to the arrest of Dumisani Witness Ndeya, Nelson Ndlovu, Maghawe Sibanda and Shepard Tshuma was led by Captain Maluleke with a backup of the Gauteng TOMS members and Crime Intelligence. None of the participants in the operation ever stated that a request was made by any senior official of the DPCI requesting them to assist Captain Maluleke. The statements of members of Crime Intelligence who participated in this operation corroborate each other in that the group firstly met at Fourways Shopping Centre. The TOMS AVL

also confirms, backed by the cellphone records of Captain Maluleke and Warrant Officer Makoe. However the claims made by Bongani Henry Yende (A4), Petros Jawuke (A5) and Desmond Campbell (A6) that Major General Sibiya was at the planning venue (Fourways Shopping Complex) could not be substantiated. The cellphone record of Major General Sibiya were analyzed by an expert and indicated that at the time of the alleged planning, Major General Sibiya was in Pretoria. None of the witnesses who claim that Major General Sibiya was at Fourways ever saw him in person but allude that they were informed by Warrant Officer Makoe that Major General Sibiya was in the blue BMW. This information highlights the depicting false picture that can be created by hearsay evidence. It is immaterial of how many people heard Warrant Officer Makoe saying that Major General Sibiya was in a blue BMW at Fourways Shopping Center but the evidence from the analysis of his cellphone records proves otherwise.

After planning at Fourways shopping Centre, Captain Maluleke went Diepsloot where two Zimbabwean Nationals were arrested. Other members who assisted Captain Maluleke in the arrest of Zimbabwean Nationals cannot be charged of any crime of kidnapping because they were rendering assistance to a normal police operation without any prior knowledge whether Captain Maluleke followed the procedures required in the arrest of a fugitive wanted by the law enforcement agency of another country. It also need to be proven that Captain Maluleke knew that the Zimbabwean Nationals were wanted by the Zimbabwean police and deliberately arrested or requested assistance in their arrest without following the correct procedures as required in terms of the law.

Shepard Tshuma (1) stated that one of the officer known as 'Leburu' took his wallet which was in his back pocket and removed R300-00. Constable Radebe was identified by other members of Crime Intelligence as "Leburu" and together with Warrant Officer Makoe carried out assaults on Zimbabwean Nationals while they were lying down. There was nothing wrong for Constable Radebe known as 'Leburu' and Warrant Officer Makoe to provide assistance to a police operation but stealing money and carryout assault on anyone constitute both theft and assault. However it is important that the version of the victim be corroborated in order to sustain a prima facie case against Warrant Office Makoe and Constable Radebe. From the available evidence it is clear that there is corroboration that Zimbabwean nationals were assaulted, but there is no medical evidence to prove such. It is also noteworthy that members of the DPCI contradict members of Crime Intelligence who corroborates the victims. If the assault did take place, it could also have been witnessed by members of DPCI. If the members of Crime Intelligence witnessed the assault why did they not stop it, or even immediately report what they witnessed. Because they had legal duty to act, the credibility of their version becomes questionable.

There is also insufficient evidence to prove that Constable Radebe took money from Shepard Tshuma. In addition Maqhawe Sibanda (A2) claim that the police took his R500-00 but the identity of the officer who took the money is unknown.

Shepherd Tshuma (A1) stated that at the time of their arrest, Major General Sibiya alighted from the black BMW and came to where they were lying. This version is disapproved by the cellphone records of Major General Sibiya which shows that at the time of the arrest he was not at the scene. It is also inconsistent with the evidence provided by Petros Jawuke (A5) and Desmond Campbell (A6) who stated that they heard that General Sibiya was in a blue BMW and did not see him in person. Captain Boonstra and Lt Col Neethling corroborate each other in that

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while they were aware of the presence of Zimbabwean police at the scene, Major General Sibiya was not at the scene. After the four Zimbabwean Nationals were arrested, they were taken to Orlando police station where they were detained. With specific reference to OB 276 to 279 (A8), entries made from 04h10 of 06/11/2010 to 12h00 of the 08/11/2010 confirm that Captain M L Maluleke of the DPCI with force number 0622729518 arrested Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane Sibanda and Shepard Chuma. Again with specific reference to OB 429 (A9), entry made at 11h00 of 08/11/2010 confirm that that Captain M L Maluleke of the DPCI with cell number 0827729518 booked out Dumisani Witness Ndeya, Nelson Ndlovu, Maghabane Sibanda and Shepard Chuma to Beit Bridge. The telephone records of Captain Maluleke also show his movement from Orlando Police station until Beit Bridge in Musina. The statement of Lt Col Ndanduleni Madilonga and his cellphone records confirms that he received a call from Captain Maluleke when he was approaching Musina on 08/11/2010. According to Lt Colonel Madilonga (A51) he assisted Captain Maluleke to cross the border and the two Zimbabwean Nationals who were in the vehicles were handed to the Zimbabwean police.

The documents used in the deportation of the Zimbabwean Nationals were part of the internal investigation conducted by Warrant Officer Nthlamu (A80). In his statement he outlined the documents received from Captain Maluleke as four warrants of detentions and four notices of deportations. The documents which the Captain Maluleke claimed to be valid Home Affairs documents used in the deportation of the four Zimbabweans appear to have been forged as they have employee number that does not exist in the Home Affairs Department. The Warrant of Detention of Illegal Foreigner (BI-1725) document was produced by Captain Maluleke as a proof that Shepard Chuma, Witness Ndeya and Nelson Ndlovu and Maghawe Sibanda were detained for being illegal foreigners and they were seen by an Immigration Officer. However the signature that appears on the documents does not belong to any member of Home Affairs in Gauteng and the appointment number 037152 does not exist.

Potiswa Skosana (A31) an Immigration Officer stated that BI-1725 used was discontinued in 2008 and in 2010 it was no longer part of the official documents of Home Affairs. The stamp on four documents according to the handwriting expert, shows that whosoever completed the documents used an old form already completed and deleted affiliated information to put the new information of the four foreign nationals. The Notification of the Deportation of an Illegal Foreigner (DHA-1689) documents were produced by Captain Maluleke as proof that Witness Ndeya, Nelson Ndlovu, Shepard Chuma and Maghawe Sibanda were deported through Beit Bridge border. According to Peter Eiberg (A37) the forms were wrongly stamped and do not have fingerprints of the deportees as required.

The stamp number 20 belonging to Beit Bridge was used and such stamp is not for deportation purpose. According to Immigration Officer Kobelo Margret Mohlahlo (A39) the stamp is individualized and belong her and on 08/11/2010 she was off duty and the stamp was locked in the safe. This is confirmed by the duty roster which clearly shows that on the 7th and 8th of November 2010 Immigration Officer Kobelo Margret Mohlahlo was off duty. The stamp could have been easily duplicated.

The letter retrieved from Captain Maluleke's laptop provides a vital clue that his engagement in the operation did not receive the blessing of his superior. The letter was addressed to the Director General of Home Affairs requesting assistance in

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171

the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police. Protocol dictates that a letter to such a senior person in the Home Affairs department could not have been signed off by an officer at a rank of Captain but could have needed the head of the DPCI. However the letter retrieved clearly shows that Captain Maluleke was the author and he also wrote his name as an approving authority of the request. In addition when the renditions issue hit the media at the end 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean Nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question.

- The arrest of Prichard Chuma on 23/11/2010

On 23/11/2010 an operation led by Captain Maluleke was carried out at Diepsloot and Soweto in search of Prichard Chuma who was wanted in connection with a murder of Zimbabwean police Colonel. The investigation did not gather much in relation to the arrest of Prichard Chuma. However the statement of Lt Col Neethling, Captain Nkosi and Warrant Officer Selepe are at the center of the arrest and deportation of Prichard Chuma. In this operation Desmond Campbell (A6) and Petros Jawuke claim that Major General Sibiya was involved. Desmond Campbell stated that he saw a person seated in a BMW whom Warrant Officer Makoe referred as Major General Sibiya. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". These remarks justify the drawing of an inference that members of crime intelligence tried hard to implicate Major General Sibiya, most especially because his cellphone records provide concrete alibi that he was not at the crime scene.

The involvement of Captain Maluleke in the arrest and transportation of Prichard Chuma provide for a prima facie case of kidnapping. With specific reference to an OB entry dated 22/11/10 (A57/1) made on 22/11/2010 Captain Nkosi booked in Prichard Chuma at Alexandra Police Station. However Nkosi wrote the name and contact numbers of Captain Maluleke as the person who is the Investigating Officer of the case. In his statement he stated that he was personally requested by Captain Maluleke to detain Prichard Chuma at Alexandra Police station.

With specific reference to OB entry dated 23/11/2010 (A57/2) Warrant Officer Selepe booked out Prichard Chuma from Alexandra Police station for a Bulawayo case. He confirmed in his statement that he was requested by Lt Col Neethling to assist Captain Maluleke. Lt Col Neethling corroborates Warrant Selepe in that he was requested by Captain Maluleke to provide assistance and requested one of his members. Warrant Officer Selepe stated that he transported Prichard Chuma with Captain Maluleke on 24/11/2010 to Beil Bridge. The version of Warrant Officer Selepe is corroborated by cellphone records and itineraries of Captain Maluleke.

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• The arrest of Gordon Dube and Johnson Nyoni on 11/01/2011 and 26/01/2011.

The arrest of Gordon Dube and John Nyoni started when Constable Rikotso (A67) went to Wierdabrug police station at the CIAC office which is responsible for profiling and identification of crime hot spots. When he arrived, he found Constable Sombhane who gave him a list of wanted suspects and on top of the list was Gordon Dube who was wanted in connection with murder in Zimbabwe and robberies in South Africa. At that time the name of Captain Maluleke had not yet surfaced and members of Crime Intelligence were just carrying out the daily duties. Constable Rikotso is corroborated by Constable Sombhane and Constable Plantinah Mokgobu who stated that the information about the wanted Zimbabwean National initially surfaced when they visited CIAC office at Wierdabrug.

Gordon Dube was arrested on 11/01/2011 and was found in possession of an unlicensed firearm. Constable Rikotso later saw the same firearm with Captain Maluleke at the Hawks offices after it was returned from ballistics. It is also clear that the suspect Gordon Dube was facing many charges in South Africa including murder and robbery. Most of the cases against Gordon Dube were investigated by Constable Meyer except Diepsloot Cas 93/01/2011 which was investigated by Warrant Officer Dlamini. According to Constable Meyer the following cases were against Gordon Dube, Wierdabrug Cas 531/12/2010, Wierdabrug Cas 220/02/2010, Wierdabrug Cas 147/11/2010, Wierdabrug Cas 1022/12/2010, Wierdabrug Cas 310/10/2010 and Diepsloot 93/01/2011. He was informed by Captain Maluleke from the Hawks that suspect Alfred Gordon Dube was also wanted in Zimbabwe. According to Constable Meyer, Captain Maluleke informed him that Gordon Dube was also wanted for murder as per Bulawayo CR 438/09/2010. He stated that he booked out suspect Gordon Dube and handed him to Captain Maluleke. Captain Maluleke informed him that suspect Gordon Dube will be handed over to the Zimbabwean government through Immigration channels. The request that Captain Maluleke made to Constable Meyer, Detective Constable Rambuda, Warrant Officer Dlamini in connection with the Gordon Dube demonstrate the extent to which he was ready to go in order to handover the suspect to the Zimbabwean police. The suspect was awaiting trial prisoner who was connected in five cases including murder. Statements of Constable Rambuda and Constable Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed to Zimbabwean police and was sentenced to life imprisonment. He also acknowledges in a letter retrieved from the laptop that he handed back the firearm to Zimbabwean Police. In January 2011 members of Crime Intelligence received information from CIAC at Wierdaburg regarding the wanted suspect John Nyoni. The person they liaised with at CIAC was Constable Sombhane who also gave them the number of Captain Maluleke. She also spoke to Maluleke over the phone while they were there. They then drove to the Hawks offices to meet with Captain Maluleke who told them that the suspect murdered a police officer in Zimbabwe. The request to arrest John Nyoni was after a successful operation that led to the arrest of Gordon Dube. According to members of TRT, they received a call via two ways radio from the commander to go to Diepsloot police station. When they arrived they found the Station Commander of Diepsloot Police station who introduced them to Captain

MS 171

Maluleke. Captain Maluleke was with two male persons and a female who were introduced as members of Crime Intelligence. Captain Maluleke informed them that there was a person who committed serious cases in Zimbabwe and he is very dangerous. After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat.

However there is corroboration in that Captain Maluleke was the driver of the operation that led to the arrest of Johnson Nyoni. He met with members of Crime Intelligence and tasked them to look for Johnson Nyoni after they successfully traced and arrested Gordon Dube. The OB book at Moot Police station clearly shows that John Nyoni was booked in by a member of TRT and booked out by Captain Maluleke.

The Zimbabwean Nationals were arrested and detained during DZP period which gave the Zimbabwean grace period of 90 days to apply for valid documents. During the DZP which is Dispensation for Zimbabwean Projects, all Zimbabweans were given 90 days to stay in the country in order to apply for legal documents and surrender illegally obtained South African ID's without consequence. The project according to Home Affairs started on 20 September 2010 and ended in 31 December 2010 with extension which ultimately ended in July 2011. The letter retrieved from Captain Maluleke's laptop addressed to home affairs requesting assistance in the Deportation of the Zimbabwean nationals involved in the murder of Zimbabwean police (dated 08/11/2010) was generated on 08 November 2010 shortly before he booked out the Zimbabwean Nationals out of Orlando Police station. It is doubtful that the permission was acquired given the time at which the Zimbabwean Nationals were booked out. In addition, he cited the DZP as a challenge in the deportation of Zimbabwean Nationals and he wanted assistance from Home Affairs. This does not only show that he was aware of the Dispensation for Zimbabwean Projects which gave Zimbabwean nationals a grace period, but also that there was ulterior motive way above deportation on the basis of being illegal immigrants.

The e-mails retrieved from Captain Maluleke's laptop also show communication with Zimbabwean police where he asked them about the trip going back home and that he would continue to trace remaining suspects. He also exchanged photographs with them of the suspects and the team involved in the operation.

The overtime claim of Captain Maluleke corresponds with the dates on SAP 10's from various stations regarding the booking out of the Zimbabwean nationals. On 08/11/2010 he transported Zimbabwean Nationals to Beit Bridge. The Itinerary shows that on 08/11/2010 he went to Beit Bridge and came back on 10/11/2010 and claimed a total of R1845-00. On 24/11/2010 he went to Beit Bridge and came back 26/11/2010 and claimed a total of R1845-00. On 28/01/2011 he went to Beit Bridge and claimed a total of R552-00. The records also correspond with his cellphone movement as depicted by towers recordings.

m *141*

7. FINDINGS

- The IPID investigation established that Captain Maluleke led the operation that resulted in the arrest of Zimbabwean nationals wanted in connection with the murder of a Zimbabwean senior police officer. The evidence gathered clearly shows that the Zimbabweans Nationals were not wanted in connection with ATM bombing as initially claimed and they were not deported for being illegal immigrants.
- There is overwhelming evidence that Captain Maluleke was not only the lead person but also used his position of being the only member of the "Cross Border Desk" to acquire cooperation in an operation he knew that it did not follow the legal procedure.
- It was found that the claim made by Shepard Tshuma that Constable Radebe took his R300-00 could not be corroborated. Maghawe Sibanda (A2) also made a claim that the police took his R500-00 but the identity of the officer who took the money is unknown.
- There are contradictions with regard to assault by Captain Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.
- It was also found that the senior members of DPCI could not have known that Captain Maluleke did not follow procedures as it is the duty of the officer in question to comply with the legal imperatives of the particular operation. He generated a letter to the Director General of Home Affairs and still put his name as an approving authority thereby confirming that he did not want his seniors to either know or become aware of his activities.
- The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts.
- The evidence that suggest that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggest he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya" and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analyzed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria.
- There is no evidence for the involvement of Former General Mzwandile Petros. However he addressed a letter dated 31/05/2011 to Provincial Head of Crime Intelligence in Gauteng appreciating the good work that members of Crime Intelligence have done when they arrested Zimbabwean nationals involved in the murder of Senior Police Officer in Zimbabwe. The letter was as a result of a request made by Former General Toka of Crime Intelligence requesting General Mzwandile Petros to appreciate members of Crime Intelligence.
- There is also no evidence that suggest that Lt General Dramat, Lt General Toka, Lt General Lebeya and Major General Hlatshwayo were involved.

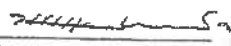
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RENDITIONS

[DIEPSLOOT CAS 390/07/2012]

8. RECOMMENDATION

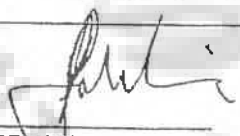
Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them. However with regard Lt Col M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice.


Mr. Hl KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO

Recommended/~~not recommended~~


Mr. M SESOKO
ACTING CHIEF DIRECTOR- INVESTIGATIONS AND INFORMATION MANAGEMENT
IPID: NATIONAL OFFICE
DATE: 18/03/2014

Approved/~~Disapproved~~


MR. RJ MCBRIDE
EXECUTIVE DIRECTOR: IPID
DATE: 09/04/2014

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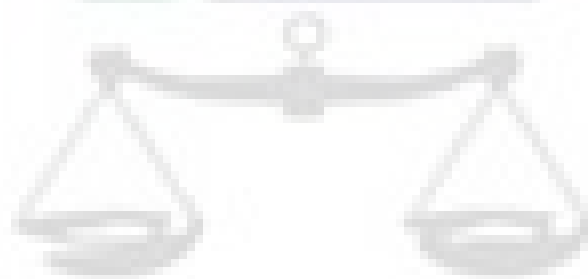
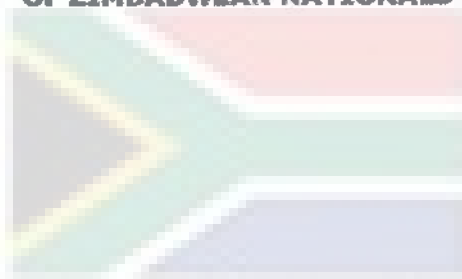
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**REPORT ON THE IPID INVESTIGATIONS REGARDING THE ILLEGAL RENDITIONS
OF ZIMBABWEAN NATIONALS**



COMMISSION OF INQUIRY
INTO STATE CAPTURE

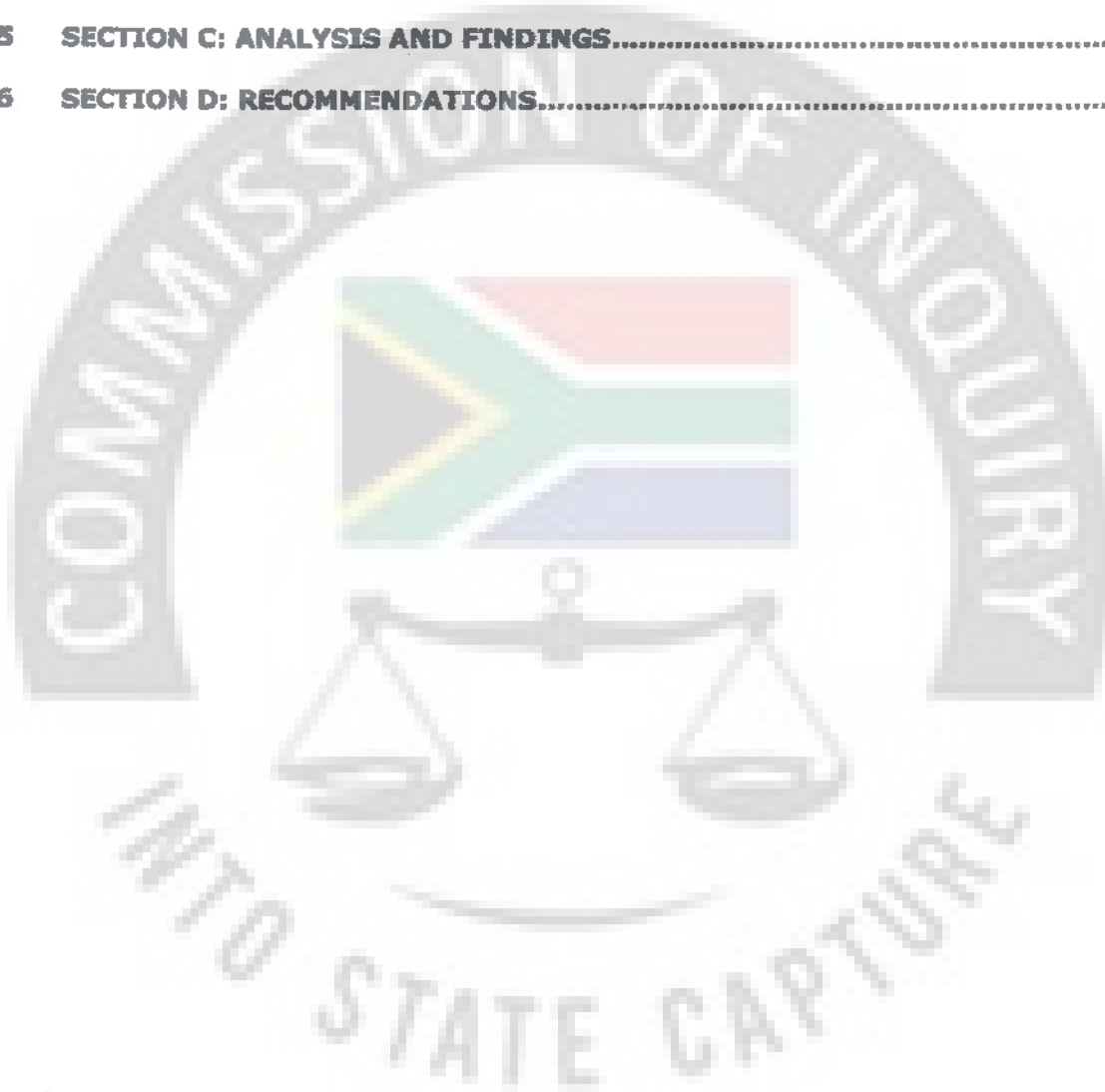
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TABLE OF CONTENTS

1	GLOSSARY OF TERMS	3
2	INTRODUCTION	5
3	SECTION A: CIRCUMSTANCES SURROUNDING THE COMPILING OF EACH REPORT	19
4	SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT	34
5	SECTION C: ANALYSIS AND FINDINGS.....	46
6	SECTION D: RECOMMENDATIONS.....	72





1 GLOSSARY OF TERMS

- Act - Independent Police Investigative Directorate Act 1 of 2011
- Angus - Glen Angus
- Baloyi - George Baloyi , Deputy Director of Public Prosecutions, North Gauteng
- Brig - Designated Rank of Brigadier in the SAPS
- Chauke - Advocate Chauke, DPP for South Gauteng
- Criminal Procedure Act - Criminal Procedure Act No.51 of 1977
- DDPP - Deputy Director of Public Prosecutions
- Docket- Diepsloot 390/07/2012
- DPCI - Directorate for Priority Crime Investigation
- DPP - Director of Public Prosecutions
- Dramat - Lieutenant- General Anwa Dramat
- Dube - Gordon Dube
- DZP - Dispensation for Zimbabwean Project
- First Report - IPID Report dated 22 January 2015 signed by Khuba
- IPID - Investigative Police Investigative Directorate
- Immigration Act - Immigration Act No.13 of 2002
- Investigator - means a person appointed under Section 22 of the Act
- Jawuke - Mr Petrus Jawuke
- Jiba-Advocate Nomgcobo Jiba, Deputy National Director of Public Prosecutions
- Khuba - Mr Innocent Khuba.
- Lt. Con -Designated rank of Lieutenant Colonel in the SAPS
- Lt-Gen - Designated rank of Lieutenant General in the SAPS
- Maj-Gen - Designated Rank of Major General in the SAPS
- Maluleke - Captain Mashangu Lesley Maluleke
- McBride - Robert McBride -Executive Director: IPID.
- Moeletsi - Senior State Advocate at the NPA
- Mosing - Senior State Advocate at the office of the NDPP (Head of Special Projects Division)
- Moukangwe - Colonel Moukangwe
- Mzinyathi - Director of Public Prosecutions- North Gauteng
- National Prosecuting Authority Act - National Prosecuting Authority Act No 32 of 1998
- NDPP - National Director of Public Prosecutions
- NPA - National Prosecuting Authority
- Nyoni- Johnson Nyoni



- Nxasana - Mxolisi Nxasana, National Director of Public Prosecutions
- Preliminary Report- the preliminary report drafted by Khuba and submitted to Mosing, dated 22 October 2013
- Rendition - the illegal deportation of five Zimbabwean nationals described at 2.2.5.1, 2.2.5.2 and 2.2.5.3
- SAPS - South African Police Service
- Second Report - the IPID Report dated 18 March 2014 signed by Khuba, Sesoko and McBride
- Selepe - W/O Selepe
- Sesoko - Matthews Sesoko, Head of Investigations: IPID
- Sibiya - Major- General Shadrack Sibiya.
- Success Report - Consolidated success report addressed to Maj General Sibiya, Lt Gen Dramat and Lt Gen Toka dated 4 February 2011.
- TOMS - Tactical Operations Management Section
- TRT - Tactical Response Team
- Werksmans - Werksmans Attorneys
- W/O - Designated Rank of Warrant Officer in the SAPS



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2 INTRODUCTION

The offices of Werksmans have been mandated by the Honourable Minister of Police, Mr Nathi Nhleko, to conduct an investigation into the reports submitted by IPID which deal with the Rendition.

2.1 Terms of reference for the investigation

In conducting the aforesaid investigation, the Minister has provided Werksmans with the following terms of reference:

"5. Your terms of reference in the investigation are the following:

5.1 who and under what circumstances was the original report altered or how the Second Report came about with both reports signed by the same person; i.e Mr Khuba;

5.2 whether any misconduct or offence has been committed and if so by whom?;

5.3 whether there is prima facie evidence of misconduct and criminal liability by Lieutenant-Dramat; Major-Sibiya; and any other officers mentioned in the original report.;

5.4 the circumstances under which report and the docket handed in the NPA and what happened to the docket whilst in the NPA's possession;

5.5 any other matter that might come to your attention during the investigation which relevant to your conclusions and findings."

2.2 Factual background of the rendition

2.2.1 Based on an evaluation of the First and Second Reports as well as the documents and evidence before us, we have summarised the sequence of events of the Rendition as set out below.

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2.2.2 During the period November 2010 until January 2011, a number of Zimbabwean nationals were arrested by SAPS together with Zimbabwean police officials. The arrest of these individuals was explained by the DPCI, in response to a parliamentary question posed by a member of the Congress of the People. The DPCI, through Dramat, advised parliament that the individuals in question were deported as illegal immigrants and had been arrested on suspicion of having committed or been involved in certain crimes, such as ATM bombings. The DPCI in its parliamentary response, further stated that when it came to light that the arrested individuals could not be linked to specific crimes, the individuals were deported to Zimbabwe.

2.2.3 From the documentation provided for our review, it appears that The DPCI was aware that the response to the parliamentary question was not factually correct. It is our view that they deliberately misled parliament in this regard.

2.2.4 The circumstances surrounding the arrests appeared to be questionable and raised a number of legal considerations relating to, inter alia, the lawfulness of the process followed by the SAPS in deporting the relevant Zimbabwean nationals.

2.2.5 The arrests of the five Zimbabwean nationals was effected in three stages which will be summarised briefly, below.

2.2.5.1 *The first operation*

2.2.5.1.1 The first operation relating to the arrest of Zimbabwean nationals took place on 5 November 2010 where four Zimbabwean nationals (Dumisani Witness Ndeya, Nelson Ndlovu, Maqhawe Sibanda and Shepard Tshuma) were arrested in Diepsloot and detained in the Orlando police station in Soweto. The reasons stated for their detention was that they were illegal immigrants. The operation was conducted by the DPCI head office and DPCI provincial office (TOMS). It is alleged that DPCI and TOMS were accompanied by two Zimbabwean police officers. The members of the operation

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were informed during a parliamentary briefing meeting that they were tracing suspects involved in a robbery committed in Zimbabwe during which a Zimbabwean police superintendent was fatally shot.

2.2.5.1.2

After the four Zimbabwean nationals referred to in 2.2.5.1.1 were booked into Orlando police station, Dumisani Witness Ndeya was booked out of Orlando police station in order to assist the SAPS with the tracing of a certain individual named John. John could not be traced and Dumisani Witness Ndeya was returned to Orlando police station. The four Zimbabwean nationals were detained over the weekend as illegal immigrants and on the morning of 8 November 2010 they were booked out of Orlando police station by Maluleke. Maluleke indicated at this time that the Zimbabwean nationals were to be transported to Beitbridge border post. Two of the Zimbabwean nationals were released and the remaining two were transported to Beitbridge border post and handed over to a contingent of Zimbabwean police.

2.2.5.1.3

The circumstances under which the Zimbabwean nationals were deported, is circumspect. The docket which was used during the deportation did not belong to the Department of Home Affairs, as it is required to in the case of deportations. Although there were documents which were presented as being documents issued under the auspices of the Department of Home Affairs in order to authorise the deportation, it appears from an analysis of such documentation by an expert in this regard, that the documents which purported to be issued by the Department of Home Affairs, were forged.

2.2.5.1.4

Maqhawe Sibanda was later released by Zimbabwean police after allegedly spending eleven days in custody and being tortured. Dumisani Witness Ndeya died while in the custody of the Zimbabwean police.



2.2.5.2 *Second operation*

2.2.5.2.1 A second operation was conducted on or about 22 November 2010 by the same police units which conducted the first operation. In this second operation, Prichard Chuma was arrested in Diepsloot and detained at Alexandra police station under a Zimbabwean police reference number, being Bulawayo case number: 1337/11 and was booked out on 23 November 2010 and taken to Silverton police station.

2.2.5.2.2 It would appear that on 24 November 2010 W/O Selepe of the Gauteng TOMS unit of the DPCI, on instruction by Maluleke, booked out Prichard Chuma from Silverton police station and transported him to Beitbridge border post, accompanied by Maluleke, where Prichard Chuma was handed to Zimbabwean police.

2.2.5.2.3 Prichard Chuma was never seen again. It is presumed that he also died in Zimbabwe under police custody.

2.2.5.3 *Third operation*

2.2.5.3.1 Maluleke conducted this part of the operation with the assistance of the CIG (Crime Intelligence Gathering) members of Pretoria. Gordon Dube ("Dube"), a Zimbabwean national was arrested in conjunction with two other individuals. Dube had a number of criminal cases pending against him. During the arrest, which took place in Diepsloot on or about 11 January 2011, Dube was shot and injured.

2.2.5.3.2 Due to the fact that Dube was being treated at hospital instead of being held at Wierdabrug police station, he did not appear in court with the two other individuals who were arrested with him. He was, however, due to appear in court on 28 January 2011.

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2.2.5.3.3

Dube did not appear in court as he was booked out of hospital on Maluleke's instructions. At the same time, Maluleke retrieved the gun that was found in Dube's possession when he was arrested from Weindabrug police station. The same gun was allegedly used in the robbery in Zimbabwe referred to at 2.2.5.1.1 which resulted in the death of the Zimbabwean superintendent.

2.2.5.3.4

Maluleke informed the investigating officer, Lean Meyer, that Dube would be dealt with through immigration channels. Maluleke then transported Dube to Beitbridge and Dube never returned to South Africa.

2.2.5.3.5

Maluleke once again enlisted the services of CIG in order to trace an additional Zimbabwean national, Johnson Nyoni ("Nyoni"). Nyoni was traced in Diepsloot and arrested by the CIG members and the TRT unit of the Johannesburg Central police station, on 26 January 2011.

2.2.5.3.6

Nyoni was taken to the DPCI head office where the members who participated in the arrest of Nyoni were congratulated by Dramat. Photographs depicting the members involved in the arrest, Nyoni, two Zimbabwean police members and their vehicle, and the gun retrieved from Dube's possession, were taken by a third Zimbabwean police officer.

2.2.5.3.7

Nyoni was thereafter booked out on 28 January 2011 by Maluleke and taken, together with Dube, to Beitbridge border post. The entry in the registers at the relevant police station reflect that Nyoni was booked out for the purpose of extradition to Zimbabwe through the Beitbridge border post. Nyoni was killed while in the custody of the Zimbabwean police.



2.3 Relevant legislation

2.3.1 In conducting our investigation and for the purposes of drawing any legal conclusions, we have considered the following pieces of relevant South African legislation:

2.3.1.1 Immigration Act

2.3.1.1.1 The deportation of a fugitive must be dealt with in terms of an extradition agreement between South Africa and the country of nationality of the fugitive. If no such extradition agreement exists and the individual is an illegal immigrant, the Immigration Act applies.

2.3.1.1.2 In the circumstance, there is no extradition agreement between Zimbabwe and South Africa. Notwithstanding that there exists an organisation formed in Zimbabwe in order to facilitate international police cooperation (namely, Southern African Regional Police Chiefs Co-operation Organisation) this organisation does not govern the deportation of Zimbabwean nationals who are illegal immigrants in South Africa. As such, the Immigration Act governs the deportation of Zimbabwean nationals who are illegal immigrants in South Africa.

2.3.1.1.3 The process which is required to be followed in deporting an illegal immigrant is governed by Section 34 of the Immigration Act. In terms of the aforementioned Section -

"34(1) *Without the need for a warrant, an immigration officer [our emphasis] may arrest an illegal foreigner or cause him or her to be arrested, and shall, irrespective of whether such foreigner is arrested, deport him or her or cause him or her to be deported and may, pending his or her deportation, detain him or her or cause him or her to be detained in a manner and at a place determined by the Director-General, provided that the foreigner concerned -*



- (a) *shall be notified in writing of the decision to deport him or her and of his or her right to appeal such decision in terms of this Act;*
- (b) *may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by warrant of a Court, which, if not issued within 48 hours of such request, shall cause the immediate release of such foreigner;*
- (c) *shall be informed upon arrest or immediately thereafter of the rights set out in the preceding two paragraphs, when possible, practicable and available in a language that he or she understands;*
- (d) *may not be held in detention for longer than 30 calendar days without a warrant of a Court which on good and reasonable grounds may extend such detention for an adequate period not exceeding 90 calendar days, and*
- (e) *shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights."*

2.3.1.1.4

It is evident from the above that an immigration officer is mandated to follow a particular process when dealing with illegal immigrants.

2.3.1.1.5

The Immigration Act defines 'immigration officer' to mean -

"an officer appointed by the Director-General to perform the functions of either the permitting office, port of entry or inspectorate as contemplated in the [Immigration] Act."

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2.3.1.1.6

None of the police officers involved in the Rendition are or were, at the time, immigration officers in terms of the Immigration Act and as such, none of these persons were legally authorised to conduct a deportation of any Zimbabwean nationals.

2.3.1.1.7

The Immigration Act further provides in terms of Section 49 that-

"(2) Anyone who knowingly assists a person to enter or remain in, or depart [our emphasis] from the Republic in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding five years;

...

(7) Anyone participating in a conspiracy of two or more persons to conduct an activity intended to contravene this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding seven years: Provided that if part of such activity is conducted or intended to be conducted in a foreign country, the offence shall be punishable by imprisonment not exceeding eight years without the option of a fine.

(8) Anyone who wilfully or through gross negligence produces a false certification contemplated by this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding three years.

(9) Anyone, other than a duly authorised public servant, who manufactures or provides or causes the manufacturing or provision of a document purporting



to be a document issued or administered by the Department, shall be guilty of an offence and liable on conviction to imprisonment not exceeding 10 years without the option of a fine. "

2.3.1.1.8

It is evident that the procedure to be followed in respect of deporting an illegal immigrant is governed by the Immigration Act. The fact that the Immigration Act was not complied with in the Rendition, was part of the impetus giving rise to an investigation of the Rendition.

2.3.1.1.9

It is further evident that a deliberate contravention of the Immigration Act is a crime, subject to the penalties stipulated in the Immigration Act.

2.3.1.1.10

As already stated above, the Immigration Act was contravened during the Rendition.

2.3.1.2

The Act

2.3.1.2.1

The objectives of the Act are set out in Section 2 of the Act which provides-

- "(a) to give effect to the provision of Section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;*
- (b) to ensure independent oversight of the South African Police Service and Municipal Police Services;*
- (c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;*
- (d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;*



- (e) *to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;*
- (f) *to provide for close co-operation between the Directorate and the Secretariat; and*
- (g) *to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution."*

2.3.1.2.2

Regulation 5(l) to the Act states:

"after collecting all evidence, statements and technical or expert reports, if applicable, submit a report on the investigation of the offence to the Executive Director or the relevant provincial head, as the case may be, containing recommendations regarding further action, which may include disciplinary measures to be taken against a member of the South African Police Service or the Municipal Police Service or criminal prosecution of such member." [own emphasis]

2.3.1.3

From a reading of the Act, and the above regulation, it is evident that both criminal and disciplinary recommendations may be made in relation to the conduct of members of SAPS and its directorates. This includes the DPCI as a directorate within SAPS. In addition, it appears that in terms of the regulations, the investigator must submit a report on the investigation of the offence to the executive director of IPID.

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2.3.1.4 Relevant crimes and elements of such crimes

2.3.1.5 The criminal offences referred to below are not statutorily defined but are understood in common law to constitute the conduct set out below.

2.3.1.5.1 ***Kidnapping:***

2.3.1.5.1.1 Kidnapping is defined as the unlawful and intentional deprivation of a person's liberty of movement and / or his or her custodians, of their control.

2.3.1.5.1.2 Elements of the Crime: (1) Unlawful, (2) deprivation of liberty or of custody, (3) of a person and (4) intention.¹

2.3.1.5.2 ***Murder:***

2.3.1.5.2.1 Murder is defined as the unlawful and Intentional causing of the death of another human being.²

2.3.1.5.2.2 Elements of the Crime: (1) Causing the death (2) of another person (3) unlawfully and (4) intentionally.

2.3.1.5.3 ***Assault:³***

2.3.1.5.3.1 Assault is defined as any unlawful and intentional act or omission:

2.3.1.5.3.1.1 which results in another person's bodily integrity being directly or indirectly impaired; or

¹ J. Burchell 'Principles of Criminal Law' 2013

² CR. Snyman 'Criminal Law' 2008

³ See footnote 1

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2.3.1.5.3.1.2

which inspires a belief in another person that such impairment of her bodily integrity is immediately to take place.

2.3.1.5.3.2

Elements of the Crime: (1) conduct which results in another person's bodily integrity being impaired (2) unlawfulness (3) intention.

2.3.1.5.4

Forgery and Uttering:

2.3.1.5.4.1

Forgery and Uttering is defined as unlawfully making, with intent to defraud, a false document which causes actual or potential prejudice to another.

2.3.1.5.4.2

Elements of the Crime: (1) Unlawfulness (2) document (3) false and (4) (intention)⁴.

2.3.1.5.5

Fraud:

2.3.1.5.5.1

Fraud is defined as unlawfully making, with the intent to defraud, a misrepresentation which causes actual prejudice or which is potentially prejudicial to another.

2.3.1.5.5.2

Elements of the Crime: (1) Unlawfulness (2) Intention (3) misrepresentation (4) prejudice⁵.

2.3.1.5.6

Defeating the ends of justice or obstructing the administration of justice:⁶

2.3.1.5.7

Defeating the ends of justice is defined as unlawfully and intentionally engaging in conduct which defeats the course or administration of justice.

⁴ Ibid at p733

⁵ Ibid at p721

⁶ Ibid 832

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2.3.1.5.8 Elements of the crime: (a) Conduct (b) which amounts to defeating or obstructing (c) the course or administration of justice and which takes place (d) unlawfully and (e) intentionally.

2.4 Methodology in conducting the investigation

2.4.1 In conducting the investigation and preparing this report we have-

2.4.1.1 had access to and have considered the First and Second Reports;

2.4.1.2 interviewed the following people:

2.4.1.2.1 Khuba;

2.4.1.2.2 Moukangwe;

2.4.1.2.3 Angus;

2.4.1.2.4 Sesoko;

2.4.1.2.5 Mosing;

2.4.1.2.6 Mzinyathi;

2.4.1.2.7 Baloyi;

2.4.1.2.8 Chauke;

2.4.1.2.9 McBride;

2.4.1.2.10 Jiba,

and

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2.4.1.3 we have had access to and have considered the documentation listed in annexure A attached hereto.

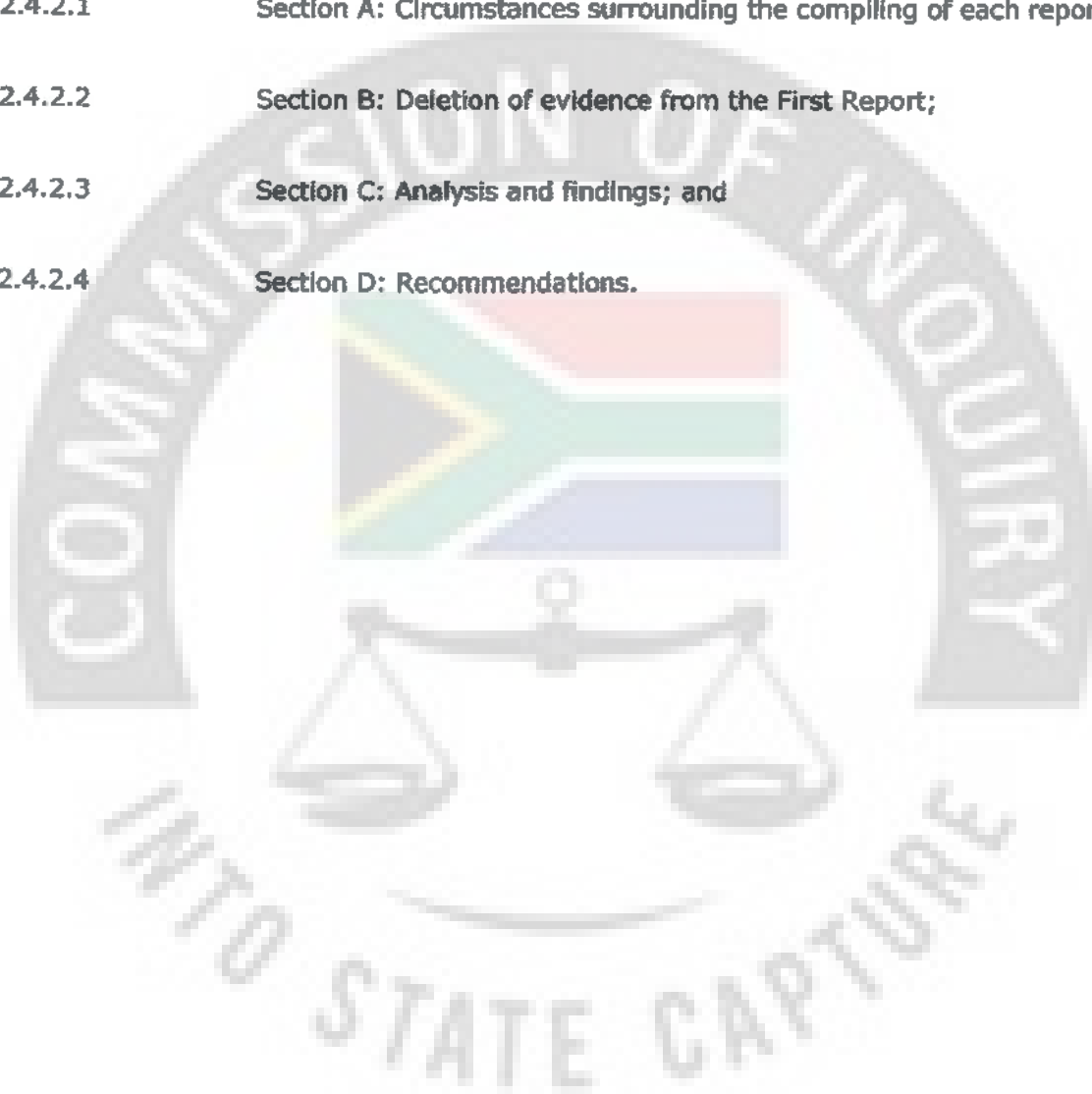
2.4.2 For ease of reference, we have divided the report into separate sections as follows-

2.4.2.1 Section A: Circumstances surrounding the compiling of each report;

2.4.2.2 Section B: Deletion of evidence from the First Report;

2.4.2.3 Section C: Analysis and findings; and

2.4.2.4 Section D: Recommendations.



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3 SECTION A: CIRCUMSTANCES SURROUNDING THE COMPILING OF EACH REPORT

3.1 Section A1: First Report

3.1.1 At the outset, it is critical to mention that prior to Khuba conducting any investigations into the Rendition, there were two investigations into the Rendition that had already been undertaken, as follows –

3.1.1.1 the DPCI had conducted and concluded an Internal investigation into the Rendition, in terms of which the DPCI members involved in the Rendition were exonerated from any wrongdoing in the Rendition; and

3.1.1.2 a member of Crime Intelligence, Moukangwe, had commenced an investigation into the Rendition. According to the investigation conducted under the auspices of Crime Intelligence was never concluded, instead it was done jointly with IPID.

3.1.2 The First Report was compiled by Khuba with the assistance of Moukangwe and the guidance of Mosing and Moeletsi. In this section we elucidate the circumstances under which this report was produced by Khuba and Moukangwe. Our explanation of the circumstances under which this report was produced is based on the interviews conducted with Khuba, Moukangwe and Mosing.

3.1.3 It is important to state that the Special Projects Division in the office of the NDPP was tasked to provide guidance to Khuba and Moukangwe during the course of their investigation. The Special Projects Division is headed by Mosing assisted by Moeletsi. The role of Mosing and Moeletsi was never to make a decision on whether to prosecute or not.

3.1.4 On 23 October 2012 Khuba received a docket from Sesoko and an appointment letter to conduct an investigation of all cases of alleged assault in relation to Sibiya. Upon perusal of the docket of Diepsloot 390/07/2012 he discovered that the DPCI had received a complaint relating to the Rendition.

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- 3.1.5 In light of the above, Khuba was instructed by the former Acting Executive Director of IPID Koekie Mbeki to conduct an investigation into the Rendition. He was further instructed to liaise with Moukangwe so that the latter could assist him to conduct the investigation.
- 3.1.6 Khuba briefed Moukangwe on the intended investigation and it was agreed that Moukangwe will assist Khuba in conducting the investigation into the Rendition. What was further agreed was that Moukangwe's name would not appear in the report once the investigation is finalised as the investigation was commissioned by IPID and Moukangwe was employed at Crime Intelligence.
- 3.1.7 Khuba began his investigation by interviewing certain members of the Department of Home Affairs. At this stage the docket already had statements obtained from the TOMS, Crime Intelligence and the Zimbabwean nationals who had been subject to the Rendition.
- 3.1.8 Subsequently, on 7 March 2013, Khuba visited the office Dramat. Moukangwe was a party to this meeting as well. At this meeting, Dramat stated that he did not recall meeting with the Zimbabwean Police. Khuba requested certain documents, including statements and documents related to the internal investigation into the Rendition conducted by DPCI, from Dramat. Dramat instructed Khuba that such request be made in writing.
- 3.1.9 When Khuba was finally provided with the requested documents, it appeared as if the statements provided recorded that the internal investigation conducted by DPCI was conducted properly and that everything was in order. Khuba, however, was unconvinced as to the correctness of the statement of a particular individual, being Madilonga, which statement was signed but not commissioned. Khuba met with Madilonga who provided a new statement detailing the actual events regarding his involvement in the Rendition.
- 3.1.10 Khuba conducted further investigations relating to the passage of individuals through the Beitbridge border post on the dates relevant to



the Rendition. In addition, Khuba spoke to Leonie Verster who was Maluleke's supervisor. Leonie Verster indicated that Maluleke did not respect the chain of command and would communicate directly with Sibiya. Leonie Verster also drew Khuba's attention to the success reports directed to Dramat, Lebeya, Hlatwayo and others. Khuba perused the three success reports with which he had been provided and noted that one report dealt with the deportation or the arrest of Ndeya, and others that were connected relation to the murder of a Zimbabwean police officer in Zimbabwe.

3.1.11 One success report recorded that the Zimbabwean police came and met with Dramat on 5 November 2010 and requested assistance. The success report further recorded Maluleke's appointment to head the assignment to trace the Zimbabwean fugitives. Khuba obtained a laptop belonging to Maluleke and found that the success reports were generated from this laptop. The laptop also contained photographs of the operation as well as correspondence to Zimbabwean police officers.

3.1.12 Khuba's investigation continued. As part of the investigation, Khuba met with members of crime intelligence. At their offices, Khuba noticed that the photographs which he obtained from Maluleke's laptop relating to the operation were posted on the office walls of some members of crime intelligence. Khuba was informed by a member of crime intelligence, Mkasibe that during January 2011 when the arrests were completed, they went to DPCI's offices and Dramat personally came to the offices at House No. 3 and congratulated them for a job well done. According to Mkasibe, Dramat requested that they not tell anyone about the details of the operation. According to Khuba, Mkasibe confirmed that he has a historical relationship with Dramat due to their mutual involvement in Umkhonto We Sizwe.

3.1.13 Mkasibe's statement was corroborated by Mngwenya who confirmed that Dramat addressed the officers and congratulated them; however, Mngwenya did not mention Dramat telling them not to divulge the details of the operation. In addition, a third officer, Mokgobu, stated that she was out of the office at the time that Dramat attended to congratulate

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them; however, upon her return, she was informed that Dramat was congratulating the officers at House No.3.

- 3.1.14 Subsequently there was a leak of information regarding the investigation which was published in the Sunday times. At this time, Khuba and Mosing began drafting questions to Dramat enquiring about Dramat's involvement in the Rendition.
- 3.1.15 Khuba also interviewed Maluleke specifically regarding his promotion from captain to colonel. Khuba was not successful in obtaining the file regarding Maluleke's promotion.
- 3.1.16 Khuba records that Dramat sent a report, in response to the parliamentary question posed by a member of Congress of the People (COPE) regarding the Rendition, explaining the circumstances of the Rendition by stating that the Zimbabwean nationals were deported as illegal immigrants. This caused Khuba to investigate the matter further. He considered expense claims relating to the travelling to Beitbridge border post, as well as cell phone and vehicle tracker records positioning Maluleke, Makoe, Nkosi and constable Radebe at Diepsloot on the night of the arrests.
- 3.1.17 Khuba then investigated the booking in and out of certain police stations of the relevant Zimbabwean nationals following the arrests at Diepsloot. Khuba then began finalising the report but did so in the absence of an analysis of the cell phone records of Sibiya. Although Khuba was in possession of cell phone records in relation to Sibiya, such cell phone records had to be interpreted by an expert.
- 3.1.18 According to Khuba, as he was conducting the investigation with Moukangwe they would consult with Mosing and Moeletsi who were providing guidance in the process regarding the evidence to be collected in finalising the investigation. At some stage during 2013, Mosing and Moeletsi advised Khuba and Moukangwe as to which information in their draft investigation report dated October 2013, needed to be added. This information was the warning statements from Dramat, Sibiya, Maluleke, Leonie Verster and analysis of cell phone records by an expert.



- 3.1.19 Khuba advised that subsequent to the advice by Mosing and Moeletsi, he and Moukangwe conducted further investigations to address the concerns raised by Mosing and Moeletsi. According to Khuba all the individuals mentioned above refused to provide warning statements.
- 3.1.20 In light of that which is stated in the preceding paragraph, Khuba and Moukangwe finalised their investigation and provided a report with recommendations. This report was submitted to Mosing and Moeletsi on 22 January 2014. This report, being the first report, was, in the opinion of Moukangwe and Khuba, final. The recommendations made in this report were that Dramat, Sibiya, Maluleke, Makoe, Radebe and Nkosi be criminally charged with defeating the ends of justice and kidnapping.
- 3.1.21 According to Khuba, the First Report was submitted as a final report and they expected the NPA to take further action as required by law, on the basis of their recommendations set out therein.
- 3.1.22 In our interview with Moukangwe, Moukangwe corroborated Khuba's version regarding his (Moukangwe's) involvement in the investigation and the compilation of the First Report.
- 3.1.23 Moukangwe explained why he, as a member of SAPS, was tasked with conducting an investigation on behalf of IPID. In this regard he stated that the majority of the work had already been done by Crime Intelligence and that his superiors were of the view that he should assist Khuba in finalising the investigation.
- 3.1.24 According to Moukangwe, when they (Moukangwe and Khuba) finalised the First Report on 22 January 2014, the only outstanding information was the warning statements from Dramat, Sibiya, Verster and Maluleke who had all refused to provide these warning statements.
- 3.1.25 Moukangwe corroborated Khuba's testimony that Dramat, Sibiya and Maluleke had refused to provide warning statements when they approached them pursuant to the advice of Mosing and Moeletsi:



- 3.1.25.1.1 Dramat told them that he wants to involve his attorney and would only give a statement after discussing same with his attorney:
- 3.1.25.1.2 Sibiya requested that he be sent questions and would thereafter respond to such questions.
- 3.1.25.1.3 Maluleke refused and advised them that he will answer all the questions in Court. Vester, who in their view was quite knowledgeable on the operation, was also refusing to provide them with a statement.
- 3.1.26 According to Moukangwe this was the only outstanding information in the First Report and that in their view, nothing further could be done to obtain this information. As such, the First Report was not contemplated to be subject to any further amendment or revision.
- 3.1.27 Moukangwe went on to say that the report on 22 January 2014 was final as they could not force anyone to make statements or give evidence.
- 3.1.28 Moukangwe informed us that he does not know anything about the Second Report and was not involved in the drafting of the said report.
- 3.1.29 Mosing corroborated Khuba and Moukangwe's evidence in relation to the involvement of his office in the investigation into Rendition. Mosing explained that the Preliminary Report was prepared on 22 October 2013, compiled by Khuba and Moukangwe and was presented to Mosing and Moeletsi for consideration. This was a draft report. Mosing and Moeletsi advised Khuba and Moukangwe to conduct further investigations.
- 3.1.30 On 12 November 2013 Mosing addressed an NPA internal memorandum to Nxasana and Jiba updating them on the status of the investigation conducted by IPID. Mosing attached the Preliminary Report to this memorandum. In this memorandum Mosing, *inter alia*, summarised the evidence gathered at that stage and stressed the need for further investigation to be conducted in relation to certain aspects of the investigation as per paragraph 5.6 of the Preliminary Report.



- 3.1.31 We are not able to confirm as to whether or not Nxasana had ever received a copy of the internal memorandum mentioned at 3.1.30 as he has failed to respond to our requests to meet.
- 3.1.32 Paragraph 4 of Mosing's memorandum specifies the outstanding investigations required at that stage to finalise the report. This includes-
- 3.1.32.1 the reports of analysis of cell phone records;
- 3.1.32.2 the report on analysis of vehicle tracking information of the members involved during the operations and;
- 3.1.32.3 the statements from Dramat, Sibiya and Maluleke.
- 3.1.33 Khuba and Moukangwe continued with their investigation and requested warning statements from the above individuals, all of which refused to provide warning statements. The investigators thereafter obtained the analysis of cell phone records and finalised their report.
- 3.1.34 On 22 January 2014 Khuba met with Mosing and Moeletsi to submit the report as a final report. According to Mosing, Khuba and Moukangwe felt that they had now completed their work and that it was up to Nxasana to make a decision on the merits of the case.
- 3.1.35 Mosing advised Khuba to include his (Khuba's) statement as the investigator in order to explain how he conducted the investigation. This was the only outstanding statement in the report of 22 January 2014. Mosing further advised us that two days after 22 January 2014, Khuba included his statement into the report and subsequently signed same. Khuba did not change the date of the report to signal the exact date that the report was signed. The First Report was complete and submitted to Mosing for further action.
- 3.1.36 On 13 February 2014, Mosing addressed an internal memorandum to Jiba and Chauke, indicating that the investigations have been finalised and that the report from IPID has been submitted for the purposes of considering the merits of the case. The First Report was attached to this

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memorandum. Mosing further stated that the docket comprising of two lever arch files, together with other files containing the cell phone data and evidence obtained from a computer belonging to the DPCI, was also enclosed.

3.1.37 Jiba confirmed that the internal memorandum was drafted on her advice and she confirmed receipt of both internal memorandums (being the memorandums mentioned at 3.1.30 and 3.1.36) from Mosing.

3.1.38 After the docket was sent to Chauke, Chauke handed the docket to Adv. Van Zyl. On 7 March 2014, Khuba accompanied by Angus removed the docket from the possession of Adv. Van Zyl.

3.1.1 The First Report contains, inter alia, a summary of the material statements provided by the individuals interviewed during the investigation as well as an analysis of the evidence. This First Report recommends that Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe be prosecuted for their involvement in the Rendition, specifically in relation to the crimes of kidnapping and defeating the ends of justice. The report further recommends that Maluleke, Radebe, Nkosi and Makoe be prosecuted for assault and theft.

3.2 Section A2: Second report

3.2.1 How the Second Report was compiled

3.2.1.1 Subsequent to the submission of the First Report, on 3 March 2014, McBride was appointed as executive director of IPID. At this stage, McBride requested an update of all the high profile matters that were being handled by IPID, including the Rendition.

3.2.1.2 As such, after McBride was appointed, Sesoko, McBride and Khuba began working on the Second Report. This was done in the absence of any consultations in this regard with Moukangwe and/or Mosing who were both active in the investigation and the submission of the First Report.

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- 3.2.1.3 At the outset, we believe that it is important for us to note that although we make reference to the so-called Second Report, we are of the view that this term is a misnomer. The Second Report is not an additional report in the matter of the Rendition, nor does it appear to be an update of the First Report, as implied by Khuba.
- 3.2.1.4 It is clear upon perusal of the First and Second Reports that the Second Report is actually a version of the First Report which has been altered by the deletion of certain evidence in order to arrive at a conclusion which is far removed from the conclusion of the First Report. There appears to be no valid explanation for this deletion of evidence, nor are we able to ascertain who is responsible for such deletions, even after having interviewed each of Khuba, Sesoko and McBride, being the co-signatories to the Second Report.
- 3.2.1.5 The First Report was drafted and submitted as set out in Section A1. As mentioned previously, the Second Report differs from the First Report in respect of the recommendations made by each report and the summary of evidence contained in each report.
- 3.2.1.6 While the First Report was signed by Khuba, the Second Report was signed by Khuba, McBride and Sesoko. It is the version of Khuba that the submission of the Second Report was necessitated by two things, namely the addition of new evidence and as a result of discussions with Sesoko.
- 3.2.1.7 Both Moukangwe and Mosing confirm that even though they were part of the investigation team in respect to the submission of the First Report, they were not consulted in the decision to amend the findings and recommendation of the First Report, which subsequently resulted in the drafting of the Second Report.
- 3.2.1.8 The sequence of events which led to the issuing of a Second Report are suspicious insofar as the dramatic change in the conclusion and recommendations of each report does not appear to have been occasioned by a substantial addition to the evidence, but instead, seems to be occasioned by a deletion of evidence.



3.2.1.9

Khuba states that he met with McBride in order to discuss his investigation, however, prior to meeting with McBride, Khuba provided Sesoko with an email copy of his report to pass along to McBride so that McBride would be able to prepare for the meeting with Khuba. Although Sesoko confirms receipt of such email from Khuba, he is unclear of whether he provided McBride with a hard copy or a soft copy of the report.

3.2.1.10

Notwithstanding that Khuba states that he emailed a copy of the First Report to Sesoko for McBride's attention, and Sesoko confirms that he provided the report to McBride, both Sesoko and McBride are adamant in stating that they did not have knowledge of the First Report. This version by McBride is contradicted by Khuba who states that in his first meeting with McBride, it was evident from a discussion regarding the Rendition, that McBride had had regard to the First Report.

3.2.1.11

According to Khuba on 5 March 2014, McBride met with Khuba. It was evident from the discussions held between Khuba and McBride during this meeting, that McBride had had regard to the First Report. Subsequently Khuba briefed Sesoko on the matter.

3.2.1.12

The following day, being 6 March, Khuba met with McBride, Sesoko and Angus. It is alleged that McBride requested Angus to review the process of the investigation to ensure that the investigation had been conducted appropriately. Angus, however, advised McBride that he did not believe that it was appropriate for him to get involved at that stage of the investigation. It was on this day that McBride requested Khuba to retrieve the docket from the NPA and to provide McBride with every document Khuba possessed regarding this matter.

3.2.1.13

On 7 March 2014, Khuba attended at the offices of the DPP with Angus and specifically to Advocate Van Zyl who was in possession of the docket at the time. Khuba and Angus then removed the docket from the possession of Advocate Van Zyl. During our interview with

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Angus, he failed to disclose the fact that he attended at the offices of the NPA with Khuba in order to retrieve the docket. When this issue was subsequently raised with him, Angus states that he merely signed for the docket in the capacity of witness but he was allegedly not aware of the fact that he was signing for the removal of the docket. This is directly contradicted by Khuba who states that Angus was aware of the request by McBride for the docket to be retrieved, attended at the NPA and spoke with Advocate Van Zyl directly requesting the docket.

3.2.1.14 The first draft of the Second Report went to and fro amongst the Khuba, Sesoko and McBride. Khuba states that at no stage did McBride request that Khuba exonerate any particular individual in the Second Report.

3.2.1.15 Khuba states that he signed the last page of the Second Report once it was finalised and did not initial each page; as such, he would be incapable of knowing if any information was added or removed. He The Second Report was then submitted, and dated 18 March 2014.

3.2.1.16 During our interview with Khuba, his attention was drawn to the discrepancies between the recommendation of the First Report and the Second Report. Khuba's initial explanation for certain deletions was related to the fact that an evaluation of the evidence in relation to Sibiyi and in conjunction with his discussions with Sesoko, it was decided that it would not be possible to prove that Sibiyi was guilty of assault beyond a reasonable doubt.

3.2.1.17 Khuba later stated that he is strongly concerned about the removal of certain information, specifically the deletion of evidence which implicates Dramat. He states that the Second Report only went through three hands, being the three co-signatories to the report, including himself and that all that he did in respect of the report was to add information which was outstanding at the time.

3.2.1.18 Khuba is not able to adequately address the issue as to why the recommendation in respect of Dramat was changed, when initially

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the recommendation in the First Report was based on Dramat's knowledge of the events and not his physical participation.

3.2.1.19 Khuba stressed that if there were changes to the First Report; he had no way of knowing if the Second Report reflected such changes. According to Khuba he did not check whether the final version of the report was the same document that he emailed to Sesoko.

3.2.1.20 Furthermore according to Khuba, he signed the Second Report and provided it to the other two co-signatories for signature after which, he cannot advise as to how the report was presented to the NPA.

3.2.1.21 McBride's version is that the only input he had into the Second Report related to grammatical changes made by McBride and that he did not see the First Report nor did he make substantive changes. This version is contradicted by Khuba who states that McBride had seen the First Report and had given input into the report which was not just grammatical.

3.2.1.22 According to McBride, he was provided with the Second Report which was already signed by both Khuba and Sesoko.

3.2.1.23 As stated above, Sesoko alleges that he never had regard to the First Report and was not responsible for the deletion of evidence.

3.2.1.24 As will be further elucidated in Section B, below, the First Report and the Second Report differ in a number of aspects. In summary, the most dramatic differences between the two reports are the difference between the recommendations contained in each report. While the First Report recommends that Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe be charged criminally for their participation in the Rendition, the Second Report recommends that only Maluleke be charged criminally for his participation in the Rendition;.

3.2.1.24.1 while the Second Report contains summaries of the statements given by all the relevant individuals whose statements were



summarised in the First Report (but for the addition of statements from Dramat, Sibiya, Maluleke and Jennifer Irish Qhobosheane), the manner in which certain statements are summarised in the Second Report has been changed insofar as the portions of certain statements and/or evidence and even the analysis of findings which are reflected in the First Report, have been altered to remove wording which implicates Dramat as having knowledge of the Rendition..

3.2.1.24.2

although Khuba states that one of the reasons for the necessity of drafting the Second Report is the addition of new evidence, it is clear from an analysis of both reports, that the only addition to the Second Report relates to the addition of the statements mentioned above, and the addition of the analysis of Dramat's cell phone records. Other than the above, nothing additional was added. More importantly, as noted above, is that certain material portions of the individual statements found in the First Report have been removed from the Second Report

3.2.1.25

Pertinent information relating to the analysis of cell phone records has been removed and the records have been analysed in a way which falls short of the scrutiny contained in the First Report and which is required in an investigation process.

3.2.2

How the docket was dealt with after the submission of the Second Report

3.2.2.1

On 18 June 2014 Advocate Van Zyl requested the docket from Khuba telephonically. Khuba's response was that McBride had instructed him to return the docket to the NDPP and that this had been done.

3.2.2.2

Chauke addressed a letter on 3 July 2014 to Nxasana informing him about the above sequence of events regarding the docket. The NDPP responded to the letter on 20 August 2014 indicating that the NDPP is in a process of considering the matter and that Advocate Chauke may close his file.



3.2.2.3 In December 2014, after the suspension of Dramat, according to Chauke he received a call from the NDPP enquiring about the Rendition matter and was informed that Dramat had been suspended. The NDPP requested Chauke to proceed with dealing with the matter. Chauke advised the NDPP that he had since closed his file on the matter and was not dealing with it anymore.

3.2.2.4 Subsequently, on or about January 2015, the NDPP contacted Mzinyathi and advised Mzinyathi that the NDPP had received the docket from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot, wherein the arrests of the Zimbabwean nationals took place, fell under the jurisdiction of the North Gauteng DPP. According to McBride, it was IPID (and not Chauke) that took the docket to the NDPP after McBride had signed the Second Report on 9 April 2014.

3.2.2.5 Shortly after his return from leave on 13 January 2015, Mzinyathi was furnished with the docket by the NDPP. At the time, Diepsloot did not fall under the jurisdiction of Mzinyathi which the NDPP was aware of. As such, this referring of the docket by the NDPP to Mzinyathi amounted to a transfer of jurisdiction, in terms of section 22(3) of the National Prosecuting Authority Act, from one DPP to another DPP.

3.2.2.6 Mzinyathi, together with Baloyi, perused the docket and engaged in discussions amongst themselves. In addition, Baloyi engaged in discussions with Khuba. Mzinyathi and Baloyi issued their recommendation in respect of this matter on 13 March 2015. In light of the transfer of jurisdiction mentioned at 3.2.2.5, the 'recommendation' made by Mzinyathi was a decision.

3.2.2.7 A decision as to whether or not to prosecute taken by a DPP is subject to review only by the NDPP, in terms of section 22(2)(c) of the National Prosecuting Authority Act. There is no authority in the National Prosecuting Authority Act which allows a DPP to review a decision taken by another DPP.

**3.2.2.8**

Subsequently, on 1 April 2015, Chauke received the docket from the NDPP with a letter containing Mzinyathi's recommendations and was requested to make a decision on this matter. This amounts to a review of the decision taken by Mzinyathi which is contrary to the provisions of section 22(2)(c) of the National Prosecuting Authority Act.

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4 SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT

IPID REPORT 1	IPID REPORT 2
<p data-bbox="226 499 866 577">Page 9 The statement of Ndanduleni Richard Madilonga</p> <p data-bbox="226 734 866 813">The statement of Madilonga states as follows in the relevant paragraphs :</p> <p data-bbox="226 880 866 1182"><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p data-bbox="226 1294 866 1973"><i>"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangements. He was given a number of General Dramat by Superintendent Ncube. He called Colonel Radzilani to verify the information but she requested that he should call Brigadier Makushu who was a Provincial Head Protection and Security Services. He then called him on his cell phone and explained to him that there are police from Zimbabwe who are intending to have a meeting with General Dramat. Brigadier Makushu told him that he was not aware of the visit but if the people are saying that they are going to meet the General, he should call General Dramat directly. He phoned General Dramat on his cell phone and</i></p>	<p data-bbox="898 499 1522 577">Page 9: statement of Richard Ndanduleni Madilonga</p> <p data-bbox="898 600 1522 678">The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p data-bbox="898 734 1522 1037"><i>"Superintendent Ncube told him that he was going to Pretoria to meet General Dramat. He said to him that maybe he knew about the Chief Superintendent who had been murdered, He said that the suspects were in Gauteng and he had organized with General Dramat to assist them in tracing the suspects".</i></p> <p data-bbox="898 1059 1522 1137">(The paragraph that follows the above preceding paragraph has been deleted)</p> <p data-bbox="898 1160 1522 1552"><i>"For the period of two weeks, he never heard anything from Superintendent Ncube and his group. After two weeks he received a call from Superintendent Ncube who told him that he was in town and he wanted to say goodbye. He went to town and met with them in front of Tops bottle store. They bought liquor and they left to the border. He did not escort them; they went to the border and crossed to Zimbabwe"</i></p> <p data-bbox="898 1619 1522 1742">The paragraph that begins with <i>"He will state.."</i> from the first report is deleted in the second report.</p>

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he responded by saying that he is aware of the
Zimbabwean police and he must let them come"



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<p>Page 21:para 5.2 reads Success report dated 04/02/2011: This report is addressed to Dramat, Hlatshwayo and Toka</p>	<p>In page 20 para 5.2</p>
<p>The relevant paragraph of the Success report reads as follows :</p> <p><i>"The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI offices about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals. The report also covers the arrest of Gordon Dube and appreciation of TRT members and members of Crime Intelligence."</i></p>	<p>In this report, this is what is deleted:</p> <p>The paragraph beginning with "The report bears reference 14/02/01 .." from the first report is deleted in the second report.</p>

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<p>Page 21 para 5.3 Emails by Captain Meluleke:</p> <p>The quoted email states the following :</p> <p><i>"He sent emails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. <u>The emails were sent to the PA of Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence</u>".</i></p>	<p>Page 21 para 5.3</p> <p>The same paragraph in this report does not mention all the individuals to which the emails were sent to, it reads:</p> <p><i>He sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. <u>He sent email to Zimbabwean police trying to find out how they travelled back home and that he is still tracing the remaining suspects...</u>"</i></p>
<p>Page 22 Letter to Stakeholders dated 20/08/2012:</p> <p>The said letter states thus:</p> <p>"Letter to stakeholders dated 20/08/2012: <i>The letter was generated the same day indicating that in August 2010 <u>General Sibiya and General Dramat</u> went to Zimbabwe to discuss matters of cooperation on cross border crimes. <u>General Sibiya</u> was appointed as the coordinator on the cooperation issue between two countries. Other letters about the arrest of Zimbabwean national in connection with the murder of Zimbabwean police refers to the cooperation agreed during the same meeting.</i></p>	<p>Page 21: Letter to stakeholders</p> <p>In this report, the names of the people involved in the cooperation with Zimbabwean Police are no longer mentioned; The letter reads thus in this report :</p> <p>"Letter to stakeholders dated 20/08/2012: <i>The letter was generated the same day indicating the trip to Zimbabwe to discuss matters of cooperation on cross border crimes."</i></p>

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Page 22: Documents Regarding Moyo's case.	Page 21: Documents Regarding Moyo's case.
<p>Towards the end of this paragraph, Maluleke stated the following in a letter:</p>	<p>The letter referred to by Maluleke does not disclose to whom the letter was addressed: In this report, this is what is stated:</p>
<p><i>"In a letter routed to General Dramat he stated that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011. Moyo was subsequently shot at transported to the border with the help of Zimbabwean police".</i></p>	<p><i>" In a letter he states that he went to Zimbabwe and conducted an operation with Zimbabwean police at Moyo's home village on 11/05/2011</i></p>
Page 23: Evidence in terms of Section 205 of CPA 51 of 1977	Page 23: Evidence in terms of Section 205 of CPA 51 of 1977
<p>Evidence of Sibiya's cell records show that he communicates with officers involved including Dramat, the analysis is put thus:</p>	<p>The analysis of Sibiya's cellular phone records now only analyses Sibiya's presence at the crime scene, not communicating with the officers involved., the analysis is as follows in this report:</p>
<p>"Cell phone record of Major General Sibiya (0725953168): Upon perusal of the cell phone records it was discovered that Major General Sibiya communicated with officers who were involved in the operation, e.g. Captain Maluleke and sent more than 20 SMS to Major General Dramat (0825515311). However Major General Dramat never responded to the SMS. The same automated SMS were sent to Lt General Lebeya at 0825751899. These SMS were sent at various milestone of the operation as deduced from witnesses' statements and documentary proofs."</p>	<p>"Findings Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence."</p>

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<p>Dramat's cellular phone records are not scrutinised nor mentioned in this report</p>	<p>According to this report Dramat's entire cellular phone record does not show any interaction between him and the Zimbabwean police. The findings are formulated thus :</p> <p><i>"The entire cell phone record of Lt General Dramat does show any interaction with the Zimbabwean counterparts. However the fact that Zimbabwean police might have entered the country is confirmed by photographs but there is no evidence that they were with Lt. General Dramat. The photos show them with members of the TRT, Captain Maluleke and members of Crime Intelligence</i></p>
<p>Cell phone Records of Maluleke are analysed in the following manner :</p> <p>"Cell phone records of Captain "Cowboy" Maluleke (08277295181 <i>The interaction between Major General Sibiya and Captain Maluleke was also found in a form of</i></p> <p><i>received and outgoing calls. Captain Maluleke also communicated .with General Dramat in terms of outgoing SMS at a very important milestone of the operation. However General Dramat never responded to the SMS which he received from Captain Maluleke at 23:12:15 on 05/11/2010.</i></p>	<p>There is no analysis of Maluleke's cell-phone records, only that there is a prima facie case against him</p>
<p>Cellular phone records of Col Neethling are analysed thus in this report :</p> <p><i>"Cell phone records of Lt Colonel Neethling (0827787624): He was directly reporting to Major General Sibiya. He contacted General Sibiya telephonically and in his statement he stated that he believed he reported the operation</i></p>	<p>There is no mention of this information and statement by Neethling in this report.</p>

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<p>to Major General Sibiya".</p> <p>Telephone call made by Madilonga to Dramat. :</p> <p><i>"Cell Phone records of Lt Col Madilonga: He is police officer who was posted at the border during the operation. He assisted Captain Maluleke to cross the border with the suspects. He contacted Lt General Dramat when he welcome the Zimbabwean police the first time. His cell phone records his interaction with Captain Maluleke in line with his statement.</i></p>	<p>The report only tests the version of Madilonga making contact with Maluleke, the version by Madilonga in the first report that he contacted Dramat is obliterated and not discussed in the analysis.</p>
<p>Page 24: Cellular phone records of Nkosi, Makoe and Radebe.</p> <p>This report does not contain the cellular phone records of these employees.</p>	<p>Page 24: Cellular phone records of Nkosi, Makoe and Radebe:</p> <p>This report contains the cellular phone records of the above employees:</p> <p><i>" The record confirms that they were at the scene even though the allegation of theft is not corroborated"</i></p>
<p>Statement by Khuba explaining his findings, the relevant deleted paragraph in the second report is as follows</p> <p><i>" On 28/01/2013 he was called by the former Executive Director who gave him the following documents stating that she received them from the Secretary of Police, report on Illegal Renditions dated 25/06/2012 accompanied by Warrants of Detention (BI-1725) for the following Dumisani Witness Ndeya, Shepard Chuma, Nelson Ndlovu and three Notification of the Deportation of an Illegal Foreigner (DNA-1689) for Nelson Ndlovu, Shepherd Chums and t1.4aghwawe Sibanda. The documents are file in the docket as per A36. An enlarged copy of death</i></p>	



<p>certificate was made from a copy of Sunday Times Newspaper he received from Brigadier Zangwa dated 23/10/2011 titled " journey to death in an unmarked car' and is filed as per A35.</p>	
<p>Khuba's findings on Dramat Page 29.</p>	<p>Khuba's findings on Dramat</p>
<p>Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:</p> <p><i>"Evaluation of the above findings: In the entire cell phone records of Lt General Dramat requested for the period 20/10/2010 to 28/02/2011, the number 0155346300 only appears once which rules out any form of communication before 04/11/2010 and after the said date. This supports his version that he called Lt General Dramat in connection with the Zimbabwean police.</i></p>	<p>Nothing is said about this issue</p>
<p>• Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation. Khuba finds the following in this respect :</p> <p><i>"Evaluation of the above findings: The success report signed by Leonie Verster was traced to Lt Col Maluleke's laptop as picked from the retrieved deleted data. The report was amended on 26/01/2011 and 31/01/2011 before it could be emailed to a female officer, Warrant Officer Thabiso Mafatla on 09/02/2011 at 14h32. There is no material difference between the document retrieved from the laptop and that found at the Hawks offices during investigation. This proves that Leonie Verster did not generate success report but only signed the report drafted by Captain Maluleke. The date of the meeting</i></p>	<p>• Dramat held a meeting on 05/11/2010 with Zimbabwean police planning the operation</p> <p>Khuba states the following in respect of this allegation in this report:</p> <p><i>-"The success report that claim that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on that basis that a prima facie case cannot be premised on speculation, but need corroborated facts"</i></p>



<p><i>between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cell phone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to allow Zimbabwean Police to enter into the country. Since the Zimbabwean Police where at Bel Bridge between 20h00 and 21h00, it is logical that they arrived in Gauteng late at night, leaving them with the, opportunity to have the meeting with General Dramat in the morning of the 5th of November 2010 as stated in the Success Report."</i></p>	
<p>• Committed Government Resources Into the Operation Khuba makes the following finding :</p> <p><i>"Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain Maluleke, delegating responsibility to Major General Sibiya to assist the Zimbabwean Police in tracing • wanted suspects invariably commit government resources into an unlawful operation that amount to a criminal offense</i></p>	<p>• Committed Government Resources Into the Operation</p> <p>Nothing is said of this aspect</p>
<p>Congratulating the officers for the arrest of John Nyoni . Khuba makes the following finding in this regard:</p> <p><i>"Evaluation of the above findings: Words of appreciation from General Dramat show both interest in the arrest of the Zimbabwean Nationals and his knowledge of the operation. if the operation was lawful he would not have</i></p>	<p>•Congratulating the officers for the arrest of John Nyoni.</p> <p>Nothing is said about this issue</p>



<p>warned them not to tell anyone about it".</p>	
<p>He received communication regarding success reports and photos of the operation through his personal assistant Phumla</p> <p><i>"According to the information retrieved from the seized laptop, Captain Maluleke sent e-mails circulating more than 20 photos of both the suspects arrested and the members involved in the operation. The emails were sent to the PA of General Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence.</i></p>	<p>Nothing is said about this issue</p>
<ul style="list-style-type: none"> • He was kept informed of the developments in the operations that led to the arrest of wanted Zimbabwean Nationals. • <i>"The cell phone records of General Sibiya shows 30 SMS sent to General Drama! at various milestones of the operation. He also received an SMS from Captain Maluleke shortly after the arrest of Zimbabwean Nationals. He never responded to any of the SMS which may suggest that they were only informing him of the progress".</i> • 	
<p>Report to parliament in response to the allegation:</p> <p><i>"A copy of the letter sent by Zimbabwean authority to Col Ntuteni clearly mention the names of people whom General Dramat in his report to parliament stated that they were deported for being illegal immigrants. The letter clearly indicates that the suspects were wanted for murdering Superintendent Chatikobo of Bulawayo on 18th September 2010. It goes further to state that there was</i></p>	



<p><i>joined operation between South African Police and Zimbabwean police to trace and arrest the suspects."</i></p>	
<p>Innocent Khuba's findings on Sibiya page 32</p>	
<ul style="list-style-type: none"> The meeting held between IPID and Dramat on 2013/03/07 <p><i>"There is evidence and witnesses corroborate each other that General Sibiya was both at the scene and planning venue. The meeting held between IPID and General- Dramat on 201-3/03/07 confirmed that General-Sibiya was appointed to be the Head of TOMS which he created to trace wanted suspects.</i></p>	
<ul style="list-style-type: none"> Sibiya's presence at the scene <p><i>"Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma"</i></p>	
<p>Cell phone Records Analysis</p> <p><i>"In other operations cell phone record of Warrant Officer Makoe, Captain Maluleke and Col Neethling clearly show continuous contacts with General Sibiya during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiya during the operation. However the cell phone records of General Sibiya does not place him at the scenes and planning venues as claimed by witnesses. It is also clear that some of the witness claim to have heard that General Sibiya was in the car rather than seeing him personally"</i></p>	
<ul style="list-style-type: none"> The meeting with Zimbabwean Police for Cross-Border Crimes 	

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H1



<p><i>"The meeting held in Zimbabwe wherein General Sibiya was appointed as a coordinator on cooperation matters involving the two countries suggests that the operation could not have been done without his knowledge more so because his Gauteng Team was involved in the operation. However this inference cannot provide prima facie case that he was involved "</i></p>	
Recommendations	Recommendations
<p><i>Based on the available evidence, the Independent Police Investigative Directorate recommends that Lt General Dramat, Major General Sibiya, Lt Col M Maluleke, Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe be charged criminally for;</i></p> <ul style="list-style-type: none"> • <i>Kidnapping</i> • <i>Defeating the ends of justice,</i> • <i>Assault and theft (only applicable to Captain M L Maluleke, Warrant Office Makoe, Constable P M Radebe and Captain S E Nkosi)</i> 	<p><i>"Based on the available evidence, the Independent Police Investigative Directorate recommends that no charges should be brought against It General Dramat and Major General Sibiya. The investigation established that there is no prima fade case against them. However with regard Lt Cot M Maluleke, there is a prima facie case to sustain charges of kidnapping and defeating the ends of justice".</i></p>

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5 SECTION C: ANALYSIS AND FINDINGS

For ease of reference in dealing with our analysis and findings, we will address each question posed in our terms of reference, separately below. We will make our recommendations in the context of an examination of the responses to each of the questions.

5.1 Who and under what circumstances was the original report altered and/or how the Second Report came about with both reports signed by the same person: i.e Mr Khuba

5.1.1 Necessity of drafting the Second Report

5.1.1.1 The First Report was drafted and signed by Khuba in the circumstances set out at Section A1.

5.1.1.2 The Second Report was drafted in the circumstances set out at A2 and signed by Khuba, Sesoko and McBride.

5.1.1.3 Khuba was the lead investigator in the Rendition matter. He was assisted in conducting his investigation, by Moukangwe. During the investigation process, Khuba liaised with Mosing and Moeletsi from the NPA. Mosing confirms that when Khuba provided him with a copy of the First Report dated 22 January 2014, Mosing requested that Khuba add a summary of his evidence. Khuba then attended to adding his evidence and providing Mosing with a signed copy of the First Report.

5.1.1.4 Although the adding of Khuba's evidence was concluded a few days after 22 January 2014, the date of the First Report reflected 22 January 2014 nonetheless. The submission of the First Report was, in Mosing's mind a final submission of the report. In support of this version by Mosing, we have been provided with a memo addressed to the NDPP following from the consideration by Mosing of the First Report, wherein Mosing makes a recommendation to the NDPP to take certain action in this matter. It would not follow for Mosing to make such recommendation on the basis of the First

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Report extant at that time if, in his opinion, the investigation was not complete and or the First Report was not final at that time.

5.1.1.5 As outlined in Section A and B, above, it is apparent that the two reports differ significantly in respect of the recommendations made in each report. During an interview with Khuba he alleged that the Second Report was created as a result of two factors which necessitated the drafting of a Second Report. These factors were:

5.1.1.5.1 the surfacing of new information, being information regarding Sibiya's cell phone analysis and a few outstanding statements; and

5.1.1.5.2 discussions between Khuba, McBride and Sesoko regarding the analysis of the evidence.

5.1.1.6 We find it difficult to reconcile ourselves with the reasons given by Khuba for the publication of the Second Report on the following basis-

5.1.1.6.1 it is the version of both Moukangwe and Mosing, that the evidence regarding Sibiya's cell phone records were already known to Khuba before the submission of the First Report. As such, any additional analysis of the cell phone records, could not add any material evidence to the report;

5.1.1.6.2 upon perusing the Second Report, there is no material information which has in-fact been added in respect of the cell phone analysis of Sibiya's phone records;

5.1.1.6.3 contrary to there being no material evidence relating to Sibiya's cell phone records, in fact material evidence regarding Sibiya's cell phone records (specifically evidence relating to the smses sent by Sibiya to Dramat and others who were involved in the operation) was deleted and did not appear in the Second Report;

MS

141



5.1.1.6.4

the additional statements contained in the report, namely that of Dramat, Sibiya, Maluleke and Jennifer Irish Qhobosheane, do not contain material evidence which is capable of justifying an alteration in the conclusion of the report;

5.1.1.6.5

Khuba states that in discussions with Sesoko, his attention was drawn to the fact that the evidence against Sibiya may not withstand scrutiny in court and that Dramat simply having knowledge of the operation was not sufficient to implicate him criminally. This version by Khuba is contradicted by Khuba himself who states that he agrees that the knowledge of a crime is sufficient. Furthermore Khuba's version is not consistent in that Khuba himself drafted the First Report recommending the prosecution of Dramat which report was drafted with input from Mosing and Moeletsi, who had more experience with the NPA itself, than Sesoko; and

5.1.1.6.6

as an IPID investigator, Khuba would have to have a basic understanding of the workings of the law and would have or ought to have understood that his mandate is to investigate and to report and not to assume the role of the court in evaluating and testing evidence hypothetically.

5.1.1.7

Further to the above, both Angus, (who has substantial experience as an investigator), and Mosing confirm that if a report is submitted and new evidence comes to light subsequent to the submission of such report, the report may be updated to include the additional information. Any such update would not affect the status of the First Report.

5.1.1.8

Should the actual reasons which necessitated the submission of the Second Report be as Khuba stated (being to update the report with new evidence) the logical conclusion would be that the *recommendations* of the First Report would not be amended unless the additional information was so material that it required the alteration of a recommendation contained in the First Report.



5.1.1.9 In our opinion, and for the reasons discussed above, the additional information which according to Khuba necessitated the submission of the Second Report, was not sufficient or material and therefore did not require a change in the outcome of the report.

5.1.1.10 In light of the above, Khuba's alleged reasons for publishing the Second Report do not seem to be completely truthful.

5.1.2 Discrepancies between the two reports

5.1.2.1 The following material discrepancies are noted between the first and Second Reports-

5.1.2.1.1 Portions of the statements of individuals who implicate Dramat's involvement in the Rendition, which appear in the First Report, have been deleted in the Second Report;

5.1.2.1.2 the summary of evidence relating to the cell phone records of individuals has been altered to leave out information of evidentiary value;

5.1.2.1.3 the analysis and findings of the Second Report have been altered and truncated to no longer evaluate the evidence against Dramat which alteration coincides with the deletion of information implicating Dramat, in the individual statements; and

5.1.2.1.4 the recommendation in the Second Report has changed drastically, from recommending the prosecution of Dramat, Sibiya, Maluleke, Radebe, Nkosi and Makoe in the First Report, to no longer recommending the prosecution of the aforesaid individuals other than Maluleke.

5.1.2.2 The discrepancies listed above, and specifically the removal of pertinent evidence, is not justified in any way and appears to be effected in order to justify the conclusion that Dramat should not be prosecuted for his involvement in the Rendition.

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5.1.3 Explanation for the discrepancies

5.1.3.1 We have interviewed each of the co-signatories of the Second Report and none of the co-signatories have been able to offer a valid explanation for the discrepancies listed above.

5.1.3.2 For ease of reference, we will address the responses of each of the three co-signatories separately below.

5.1.3.2.1 **Khuba**

5.1.3.2.1.1 Before the discrepancies between the reports were drawn to Khuba's attention, Khuba volunteered that he did not initial each page of the report and is therefore unable to determine if any information has been added or removed in the Second Report.

5.1.3.2.1.2 According to Khuba, he simply signed the First Report and provided Sesoko with a copy of the signed report and he is not aware of how the signed Second Report was provided to the NPA from that point.

5.1.3.2.1.3 Once the discrepancies had been drawn to Khuba's attention, Khuba explained that the analysis of the cell phone evidence had been changed in the Second Report in order to summarise the evidence in a concise manner.

5.1.3.2.1.4 However, he was unable to explain any of the discrepancies and he indicated that he was concerned by the deletion of information in the summary of individual statements.

5.1.3.2.1.5 Khuba states that he was not responsible for the deletions, nor is he able to indicate who was responsible for the deletions.



5.1.3.2.1.6

On a weighing of the evidence before us and the testimonies of each individual interviewed, we accept Khuba's version of events. This acceptance is not without difficulty in light of Khuba's failure to explain the discrepancies between the First and Second reports considering that he is the author of the First Report and the co-author of the Second Report, as well as the fact that Khuba failed to disclose information during his interview with Werksmans, which information was relevant to the investigation.

5.1.3.2.1.7

The aforementioned information relates to the complaint made under sworn affidavits by Khuba and Viceroy Maoka to the NDPP in respect of Baloyi. In their affidavits the complainants state, inter alia, that Baloyi has failed to uphold his initial consideration not to prosecute Dramat. The purpose of this complaint is unclear and seems to illustrate that Khuba misinterprets his role as investigator required to make recommendations in an investigation report which is meant to be a tool to assist the NPA in deciding whether or not to prosecute. This complaint came to our attention through Baloyi and not Khuba himself.

5.1.3.2.1.8

Additional information which Khuba failed to bring to our attention, was that he sought the legal opinion of Advocate Barry Roux, in relation to the Second Report.

5.1.3.2.2

Sesoko

5.1.3.2.2.1

Sesoko stated that he was never given the First Report, hence the absence of his signature in that report.

5.1.3.2.2.2

According to Sesoko, the only report he has ever seen is the Second Report.

Handwritten signatures

**5.1.3.2.2.3**

This above version is contradicted by Khuba who states that he emailed a copy of the First Report to Sesoko to be provided to McBride before Khuba met with McBride.

5.1.3.2.2.4

It is further contradicted by Sesoko himself who corroborates Khuba's version that he received an email copy of the First Report from Khuba to provide to McBride. Additionally, Moukangwe stated that Sesoko, Khuba and himself attended at the offices of the NPA in order to submit the First Report to the NPA.

5.1.3.2.2.5

Sesoko's version is that he is not aware of any discrepancies or deletions in the Second Report, and that his involvement in the drafting of the Second Report was only supervisory and he never actually worked on the report. This is directly contradicted by Khuba's version that he and Sesoko worked on the report together and Sesoko gave substantial input in the alteration of the recommendation on the basis of what could be proven in a court.

5.1.3.2.2.6

It is clear from Sesoko's responses that Sesoko did not take us into his confidence and his reaction to questioning in respect of the reports was a bare denial of any meaningful involvement in the submission of the Second Report, and any knowledge of the First Report.

5.1.3.2.3**McBride****5.1.3.2.3.1**

McBride states that he had no input in the report other than to make grammatical changes. Conveniently, it is not possible to prove this with documentary evidence because the manuscript changes made by McBride were destroyed to prevent documents being leaked.

5.1.3.2.3.2

Notwithstanding that McBride vehemently confirms that he stands by the recommendation contained in the Second



Report, he admits that he did not read any of the evidence contained in the docket, nor did he have sight of the First Report.

5.1.3.2.3.3

McBride's version of events is that he was provided with a Second Report which had already been signed by Sesoko and Khuba and that he then signed the Second Report himself. McBride was allegedly not aware of the First Report or any discrepancies in the reports and he did not allow us to draw his attention to same.

5.1.3.2.3.4

McBride accepts that generally an Investigation report is signed by the investigating officer. However, in relation to the Second Report, McBride records his reason for signing the report as that the matter involved two provinces.

5.1.3.2.3.5

It is difficult to accept McBride's version for a number of reasons, including –

5.1.3.2.3.5.1

It is highly unlikely that as an executive director of IPID who requested an update on high profile matters within a week of his appointment, that McBride was not aware of the First Report;

5.1.3.2.3.5.2

Khuba states that upon first meeting with McBride on 6 March 2014, that it was evident from their discussions that McBride had had regard to the First Report;

5.1.3.2.3.5.3

McBride's version is contradicted by Khuba who states that McBride's input into the report went beyond just grammatical changes;

5.1.3.2.3.5.4

in addition, the reason given by McBride for signing the Second Report, being that the matter involved two provinces, is contradicted by Khuba who stated that this reason was never presented to him as being

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the reason for signature of the report by McBride but that McBride signed the Second Report as a result of his participation therein;

5.1.3.2.3.5.5

McBride states that he is not aware of any deletions in either report; nor was he interested in having his attention drawn to same. Considering that McBride in his capacity of executive director, is in the centre of the Rendition Investigation, it is perplexing as to why he would not consider the discrepancies between the First and Second Reports in order to be in a position to address them;

5.1.3.2.3.5.6

McBride vehemently supports the conclusion in the Second Report which he personally signed, without having considered, on his own version, the contents of the First Report and more importantly, the evidence in the docket;

5.1.3.2.3.5.7

McBride's version that he did not have regard to the evidence in the docket is contradicted by Khuba who states that on 6 March 2014, a mere three days after McBride's appointment, McBride requested that Khuba retrieve the docket from the NPA and provide McBride with every document that Khuba had in relation to the matter. Khuba furthermore confirms that it was not necessary in his view for the docket to be retrieved in order to add any evidence to it;

5.1.3.2.3.5.8

quite significantly, there are a number of contradictions between the statement provided to Werksmans by McBride, and the statement of facts by McBride contained in a sworn affidavit by himself relating to the Rendition. For instance, in his sworn affidavit before the High Court of South Africa, Gauteng Provincial Division -

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5.1.3.2.3.5.8.1

on page 9 and page 11 (paragraphs 24.1 and 27, respectively), of his affidavit, McBride makes reference to the First Report as a "preliminary draft of the report (of 22 January 2014)" and as "the draft and leaked report". Not only is this contrary to his own version that he did not have sight of the First Report, but referring to the First Report as a preliminary report is contradicted by the testimony of Khuba (being the actual author of the First Report) and Mosing (being a member of the investigation team instrumental in submitting the First Report) who state that the First Report was considered to be final. Furthermore, as stated above, Angus states that in his experience as an investigator of IPID, a preliminary report does not contain recommendations. This view by Angus is given credence by the fact the Preliminary Report which itself records that it is not a final report, does not contain recommendations;

5.1.3.2.3.5.8.2

at page 10 (paragraph 24.2) of his affidavit, McBride states that "the provisional findings and recommendations were found to be unsustainable on the evidence and were, accordingly, not included in the final investigation Report (of 18 March 2014)". This is a further contradiction to the version put forth to Werksmans by McBride who stated that he did not have regard to the First Report, nor did he have regard to the evidence contained in the docket. As such, McBride would not be able to pronounce on whether or not the findings of the First Report were unsustainable on the evidence. Additionally, it would be difficult for McBride to draw such a conclusion if, as he stated, the only input he had into the Second Report was related

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to grammatical changes and that he was furthermore only provided with a copy of the Second Report for signature once Khuba and Sesoko had signed the report;

5.1.3.2.3.5.8.3

at page 22 (paragraph 51.2) of his affidavit, McBride states "I want to make it abundantly clear that the final report was the product of a thorough investigation process which included taking into account all the evidence gathered through the IPID Investigation and making reasonable recommendations on the basis thereof". This statement appears to contradict McBride's version that he did not have regard to the evidence contained in the docket, and that his involvement in the Second Report was limited to grammatical changes and signature of the Second Report;

5.1.3.2.3.5.8.4

on page 23 (at paragraph 51.5) of his affidavit, McBride states that "The preliminary draft of the IPID Investigation Report was also still subject to consideration and review by Sesoko and myself". This statement is contradicted by both McBride and Sesoko. McBride stated that the only input he had into the Second Report related to grammatical changes and Sesoko said that his role was merely supervisory; and

5.1.3.2.3.5.8.5

a further and notable contradiction to McBride's version as put forth to Werksmans, is found on page 23 and 24 of his affidavit (paragraph 51.6) wherein McBride states "The IPID Investigation was conducted in co-operation with Advocate Anthony Mosing and Advocate Billy Moeletsi, from the offices of the NDPP, both of whom were involved with the IPID investigation into the

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illegal rendition of Zimbabwean nationals, even before a complaint was lodged with IPID. They remained in the investigation throughout, and were provided with regular preliminary reports by the investigating Officer, Mr. Khuba...". This statement is contradicted by Mosing who states that he was not involved in the submission and/or drafting of the Second Report.

- 5.1.4 The analysis and findings have also been altered to remove an analysis of evidence which may implicate Dramat and/or Sibiya. The alteration of the recommendation seems to be a non sequitur in light of the fact that the so-called additional information added to the Second Report does not appear to be capable of justifying an altered conclusion.
- 5.1.5 In the absence of a valid explanation for the deletions by the co-signatories, the only logical conclusion which can be drawn from the circumstances detailed above, is that the Second Report was created for the purpose of exonerating the high ranking officials, specifically Dramat and Sibiya, who were implicated in the First Report.
- 5.1.6 It is difficult to ascertain who is responsible for the deletion of the portions of the statements which appeared in the First Report and which do not appear in the Second Report. It is evident to us that none of the co-signatories to the report are being truthful in respect of their involvement in the submission of the Second Report.
- 5.1.7 Each of the co-signatories to the Second Report deny effecting the deletions. We are of the view that the deletion of material evidence which is likely to affect the decision of the NPA in determining whether or not certain individuals should be prosecuted, is a criminal offence, specifically, defeating the ends of justice or obstructing the administration of justice.

5.2 **Whether any misconduct or offence has been committed and if so by whom?**

Mr S. H /



This question is dealt with within our responses to 5.3 below.

5.3 **Whether there is prima facie evidence of misconduct and criminal liability by Lieutenant-Dramat; Major-Sibiya; and any other officers mentioned in the original report**

5.3.1 **Lieutenant-General Anwa Dramat**

5.3.1.1 In his statement, Khuba cites the reasoning for the publication of the Second Report to be as a result of new evidence coming to light. This evidence, according to Khuba, related to the cell phone records of Sibiya as well as the discussions held amongst Sesoko, McBride and himself.

5.3.1.2 Notwithstanding that the purported reasons for the publication of a Second Report do not appear to relate to Dramat, it is clear from a perusal of the First and Second Report, that a large volume of information that relates to, and in fact incriminates, Dramat which appeared in the First Report, has been removed from the Second Report. These portions of the First Report which were removed have the effect of distancing Dramat insofar as his involvement with the Rendition is concerned.

5.3.1.3 Even if Khuba's version of events is to be accepted and the decision was taken to change the recommendation in respect of Dramat due to the view that there was not enough information to prosecute Dramat, this still does not explain why information relating to Dramat was deleted.

5.3.1.4 Khuba has not been able to provide us with a plausible explanation for the removal of the information, nor are we able to draw any inferences other than that the removal has been effected in order to justify the failure of the Second Report to recommend Dramat be prosecuted criminally, whereas the First Report made such a recommendation. When Khuba was confronted with the totality of the deletions during our interview with him, Khuba responded in part with surprise and concern.

MS

141



5.3.1.5

Upon perusal of the First Report, and specifically Khuba's analysis of findings in respect of Dramat, we agree and support Khuba's analysis of findings which resulted in the recommendation that Dramat be criminally prosecuted. Without replicating the basis of Khuba's findings, which is available in the First Report, we will summarise them briefly, below.

5.3.1.5.1

Dramat met with the Zimbabwean police prior to the commencement of the operation

5.3.1.5.1.1

Madilonga's statement reflects that he was stationed at the border when Zimbabwean police officers attempted to cross into South Africa for the purposes of meeting with Dramat. Madilonga placed a call to Radzilani and Makushu, who both corroborate this evidence, in order to verify the averments by the Zimbabwean police. Madilonga was even provided with Dramat's cell phone number by Superintendent Ncube of the Zimbabwean police who identified himself to Madilonga as the leader of the group. Madilonga contacted Dramat in order to confirm the averment by the Zimbabwean police that they were going to meet with Dramat, and according to Madilonga, Dramat confirmed that he was aware of the Zimbabwean police's presence and that Madilonga should let them cross the border into South Africa.

5.3.1.5.1.2

In addition to the above, the success report dated 4 February 2011, addressed to, inter alia, Dramat and signed by Leonie Verster, records as its first point that on 5 November 2010, the Zimbabwean police visited the office of DPCI and engaged in a meeting with Dramat regarding Zimbabwean nationals who allegedly shot and killed a senior Zimbabwean police officer. The success report furthermore gives information relating to the arrest of two of the wanted Zimbabwean nationals. This success report was addressed to Dramat and there is no record of



Dramat contradicting any statement of fact within the success report.

5.3.1.5.1.3

The above information should be viewed in the context of the fact that, as mentioned in the summary of Khuba's evidence above, in a meeting with Khuba and Moukangwe, Dramat stated that he did not remember meeting with the Zimbabwean police.

5.3.1.5.2

Dramat received communications during and after the commissioning of the Rendition

5.3.1.5.2.1

The cell phone records of Sibiya show that 30 smses were sent to Dramat at various milestones in the operation. Dramat also received an sms from Maluleke shortly after the arrest of the Zimbabwean nationals. Although Dramat never responded to these smses, when viewed in the context of Dramat's meeting with the Zimbabwean police, the success reports received after the operation and Dramat's congratulating of the crime intelligence officers, the smses lead to the conclusion that Dramat was aware of the operation as it happened.

5.3.1.5.2.2

In addition to the above, there is evidence that emails circulating 20 photos of both the Zimbabwean nationals and the police members involved in the operation, were sent by Maluleke to Dramat's personal assistant. We believe that it is reasonable to deduce in the circumstances, that these emails were brought to the attention of Dramat through his personal assistant.

5.3.1.5.3

Dramat congratulated members of crime intelligence after completion of the operation

5.3.1.5.3.1

According to the testimony of Mkasibe and Mgwenya, Dramat attended at the offices of the DPCI and thanked the officers present for their participation in arresting the

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Zimbabwean nationals. Mkasibe went further to state that Dramat warned them not to tell anyone about the operation. Mgwanya did not confirm Dramat's warning. It is recorded that Mgwanya admitted to Khuba that he knew Dramat from their mutual time in Umkhonto we Sizwe. In addition, a third officer, Mokgobu, testifies that she was not at the office when Dramat attended; however, upon her return she was informed by her colleagues that Dramat had attended in order to congratulate them on a job well done.

5.3.1.5.4

Dramat's statement to Acting National Commissioner of SAPS

5.3.1.5.4.1

According to the erstwhile Acting National Commissioner of SAPS, Lieutenant General Mkhwanazi ("Mkhwanazi"), in late 2011 news of the Rendition came to light. He contacted Dramat who confirmed that members of his unit transported the Zimbabwean nationals as illegal immigrants. Mkhwanazi then summoned Dramat to his office. Dramat arrived with Maluleke. Maluleke informed Mkhwanazi that he was investigating a case of ATM bombings which led him to the Zimbabwean nationals. Once he realised that they were not linked to the ATM bombing case, he decided to deport them after getting the necessary documentation from Home Affairs. When Mkhwanazi asked whether it was necessary to transport illegal immigrants, Dramat could offer no explanation.

5.3.1.5.4.2

Not only does the above display that Dramat had knowledge of the events, but his failure to offer a valid response to the question of whether it was necessary to transport the Zimbabwean nationals illustrates that either Dramat did not exhibit the level of control and oversight that he is required to by virtue of his position, alternatively, Dramat was attempting to cover up the Rendition operation as he was aware that it was unlawful.

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5.3.1.6 In our view, the above information is sufficient to create a prima facie impression that Dramat is guilty of both criminal and disciplinary misconduct and that the circumstances surrounding his involvement in the Rendition and the decision of whether or not to prosecute Dramat, bears further consideration by the NPA.

5.3.2 **Sibiya**

5.3.2.1 We have perused and considered the contents of both the First and Second Reports in order to establish whether there is prima facie evidence of misconduct and potential criminal liability against Sibiya. It is alleged that Sibiya, was involved in the operation of 5 November 2010 and well as the operation of 22/23 November 2010.

5.3.2.2 Sibiya is the head of the TOMS unit. From our reading of the two reports regarding TOMS, we have gathered that the main objective with the establishment of TOMS was to fight priority crimes, this includes inter alia, combating armed robberies by dangerous criminals, investigating and arresting those responsible for ATM bombings.

5.3.2.3 Sibiya states as follows:

"The reality of the matter is that the operation in question was conducted under the auspices of DPCI National Head Office and they requested the services of my team because of their training and capacity".

5.3.2.4 This revelation by Sibiya confirms his knowledge of the operation that led to the Rendition of Zimbabwean Nationals. He provided TOMS personnel to assist DPCI National Head Office to carry out the Rendition.

5.3.2.5 Furthermore, in terms our reading of the annexures and two reports, Maluleke carried out the operation on instructions of his superiors.

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5.3.2.6

The Rendition was carried out by the members of TOMS under the leadership of the Maluleke. The First Report suggests that Sibiya not only sanctioned the operation, but also that he actually participated in the Rendition. Several statements and affidavits from various witnesses confirming the participation of Sibiya in the Rendition were obtained. We deal with these statements herein below for the sake of completeness.

5.3.2.7

Bongani Henry Yende whose statement is annexed as A4 to the both reports, states:

"During October 2010 I was nominated to be part of the Task Team called "TOMS". In full TOMS means Tactical Operations Management Section led by Major Sibiya who is the Provincial Commander of Hawks in Gauteng Province. The members of Crime Intelligence who worked with me at the Task Team were W/O Jawuke, W/O Ndobe and Constable Campbell.

On 2010-11-05 in the evening I received a phone call from W/O Makwe of DPCI in Gauteng who was also part of the Task Team "TOMS" that Major General wanted us to meet at Fourways to go and search for suspects in a case which a colonel was killed....

At our arrival at Fourways Shopping Centre W/O Makwe introduced two African Males as our police counterparts from Zimbabwe Police.

At the time W/O Makwe introduced the two policemen from Zimbabwe, I realised that the Colonel that was killed was from Zimbabwe and not from South African Police. W/O Makwe informed us that the two police officers came to us via the office of Dramat who is National Head of DPCI. Maj Sibiya was sitting in a navy BMW vehicle busy on his cell phone and I could not greet him".

5.3.2.8

Petros Jawuke whose statement is attached as A5 to both reports. At paragraphs 2, 9 and 10 of his statement, Jawuke states:



"During 2010 I was nominated to be part of a Task Team called "TOMS" in Gauteng Province and the team operated under the command of Major Sibiya who is the Head in Gauteng Province.

Four suspects were detained at Orlando SAPS on 2010-11-06. I do not know how Pritchard TSHUMA and Shepherd TSHUMA are related. The operation of the 2010-11-23, started during the night of the 2010-11-22 until early hours of the 2010-11-23.

I saw Maj Gen. SIBIYA in the second operation, however I also heard that he was present in the first one. I also never saw Maj. Gen SIBIYA assaulting any of the suspects. That's all I can state at this stage."

5.3.2.9

Shepard Tshuma whose statement is annexed as A1 to the both reports. Shepard was giving an account as to what transpired during the operation of 5 November 2010. Shepard states the following in relation to Major Sibiya.

"Few minutes Cowboy asked where must we be detained and one police office said we must be taken to Randburg and the other one said we must be taken to Krugersdorp. Whilst they were busy arguing about the place to be detained, one police officer said they better ask Sibiya at that time, I didn't know who Sibiya is, but later I saw him coming out from a certain black BMW and he gave them instructions to take us to Orlando SAPS."

5.3.2.10

Maqhawe Sibanda whose statement is annexed A2 in both reports. He states the following in relation Sibiya's involvement in the operation of that 5 November 2010.

"I later knew some of the police officers who were busy assaulting us. They call themselves with their name, It was cowboy the one who was wearing a cowboy hat, Nkosi, Leburu who was a coloured. I only manage to know the above but I can able to identify others if given permission to do that.

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After we were beaten by the police, they started arguing about the place to be detained. One of the police mentioned Randburg the other mentioned Krugersdorp until the other decided that Sibiya must give directions."

I saw Sibiya coming out from the Black BMW and gave instructions to be taken to Orlando SAPS and they took us to Orlando SAPS. Arrived at the Police station in the yard I was following Shepard and saw Leburu (coloured police officer) taking the money at the back pocket of the trouser of Shepard."

5.3.2.11

The aforesaid statements by the eye witnesses from Crime Intelligence confirm that the operations on 5, 22 and 23 November 2010 were carried out in connection with the murder and robbery case that took place in Zimbabwe where a Police Superintendent was killed. This conclusion is confirmed by the presence of Zimbabwean Police officials during operations.

5.3.2.12

The above statements were made under oath and are from the Zimbabwean nationals as well as members of Crime Intelligence who claim that they all saw Sibiya at either the first or second operation of the Rendition.

5.3.2.13

As mentioned earlier in this report, an analysis of the cell phone records of Sibiya purportedly does not place him at the scene at the first operation in which he is alleged to have participated. However, it is not clear whether, solely on the basis of the aforesaid analysis of cell phone records, that Sibiya can be said to be placed in Pretoria in respect of both the first and second operations, in light of the consistent eyewitness testimony which places at the scene of both operations. Although the inference is drawn from the analysis of cell phone records that Sibiya was in Pretoria, the most that can be concluded in this regard is that Sibiya's cell-phone was located in Pretoria at the relevant times. Whether Sibiya was in the same location at that time is an assumption, and given the weight of eyewitness evidence to the contrary, would be a questionable conclusion.

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5.3.2.14

It is our view that there is a clear contradiction between the conclusion to be drawn from the evidence of the eye witness discussed above, which places Sibiya in Diepsloot at the time of the operations, and the analysis of cell phone records which infers that Sibiya was located at Pretoria in Sunnyside at the time relevant times.

5.3.2.15

It is our view that this contradiction should be tested and weighed by the NPA and or a court of law. We cannot discount one piece of evidence against the other. Neither can we recommend that certain weight be placed on certain evidence or recommend that certain piece of evidence be disregarded, without it having been tested in a court of law or some forum.

5.3.2.16

Further to the above, the mere allegation that the members of Crime Intelligence have conspired against Sibiya by giving their eyewitness testimony can never be a rational basis to discount their evidence, or to fail to test the credibility of these witnesses or the veracity of their versions against the contrary evidence and conclusions which lead from the analysis of cell phone records.

5.3.2.17

According to our investigation we have established that the analysis of cell phone records serve two purposes. First, to assess the specific location of a phone at a certain time and secondly to assess the trail of communications for which the cell phone was utilised. In terms of the first assessment, Sibiya's cell phone records place his cell phones at Sunnyside in Pretoria. According to this, Sibiya was not present at any of the operations as alleged by the eye witnesses.

5.3.2.18

The second assessment of Sibiya's cell phone records shows that Sibiya communicated with officers who were involved in the operation, one of which is Maluleke and sent 30 smses to Dramat at the 0825515311 number during various milestones of the Rendition. Khuba records in the First Report that Dramat never responded to any of the smses from Sibiya.

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5.3.2.19

In our view there is a prima facie case of kidnapping and defeating the ends of justice or obstructing the administration of justice to be made against Sibiya. It is our view that he knew about the operation that led to the Rendition. He provided a team of police officers to search and arrest the Zimbabwean nationals suspected of killing the Superintendent from Zimbabwe. As the provincial head of DPCI he sanctioned the Rendition. He allegedly gave directions to the members of TOMS on where to detain the Zimbabwean nationals. The cell phone records show detailed communications between Sibiya and Maluleke and Dramat despite the latter not responding to the smses.

5.4

The circumstances under which the Second Report and the docket was handed to the NPA and what happened to the docket whilst in the NPA's possession

5.4.1

According to Mosing the NPA's involvement in the matter was called for in the early possible stages of the investigation into the Rendition. Further, the former Minister of Justice and Constitutional Development, the Honourable Jeff Radebe addressed a conference of Senior Managers of the NPA during 2012 wherein he called for the allegations into the Rendition to be investigated, as the Government was concerned about the possible violation of international law during the Rendition.

5.4.2

It is against this backdrop that the Special Projects Division in the office of the NDPP was requested to provide guidance to the IPID investigating team led by Khuba. The Special Projects Division team was headed by Mosing assisted by Moeletsi. The team met with Khuba sometime in July 2013. The team produced the Preliminary Report into the Rendition on 22 October 2013. Mosing and Moeletsi advised Khuba to conduct further investigations into certain aspects of the report.

5.4.3

On 12 November 2013, Mosing addressed an internal memorandum to the NDPP and the DNDPP. This memorandum sought to provide an update on the progress made by the Special Projects team and the investigating team led by Khuba. The memorandum goes on to say that

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there was outstanding evidence that Khuba and the team had to obtain or gather in order to finalise the Preliminary Report.

- 5.4.4 According to Mosing, the outstanding information related to the warning statements from Dramat, Sibiya and Maluleke, an analysis of the cell phone data, as well as a report on the analysis of vehicle tracking information of the members involved in the operation during the Rendition.
- 5.4.5 The investigation team finalised its investigation on or about 22 January 2014 and compiled a report with final recommendations. This was a final report on the Investigation in the Rendition. It was handed to the Special Projects team so that the NDPP could make a decision to either prosecute or not prosecute those implicated in the report.
- 5.4.6 On 13 February 2014 Mosing addressed another internal memorandum to Jiba and Chauke, indicating that the investigations had been finalised and that the report from IPID had been submitted for the purposes of considering the merits of the case. This internal memorandum also enclosed the docket comprising of two lever arch files, together with other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI.
- 5.4.7 According to Chauke the receipt of the internal memorandum from Mosing on or about 14 February 2014 was preceded by a meeting wherein the NDPP advised Chauke to consider the docket and take a decision in regard to same. Chauke was assisted by Advocate Van Zyl who is the Deputy Director of Public Prosecutions for South Gauteng. Subsequent to the internal memorandum from Mosing, the docket was handed to the office of Chauke for a decision on whether to prosecute on the matter. According to Chauke before his office could even make a decision on the matter Khuba and Angus from IPID collected the docket from Advocate Van Zyl's office on 7 March 2014 and signed a receipt thereof. It bears mention that this occurred shortly after McBride was appointed as the executive director of IPID. According to Khuba, he collected the docket following an instruction from McBride for him to do so.

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- 5.4.8 On 18 June 2014 Advocate Van Zyl telephoned Khuba requesting the docket from the latter. Khuba told him that McBride had instructed him to return the docket to the NDPP and that this has been done. Khuba did not give or specify the date by which the docket was returned to the NDPP by himself. We are advised that Advocate Van Zyl telephoned Khuba, for the second time, to enquire about the docket which his office has not received. Khuba told Advocate Van Zyl that it was never his (Khuba) intention to return the docket to Advocate Van Zyl anyway.
- 5.4.9 We are advised that in light of this information from Khuba, Advocate Van Zyl telephoned Mosing to enquire whether the docket had been returned to the office of the NDPP. Mosing advised him that the dockets were never returned to him.
- 5.4.10 According to Chauke he addressed a letter on 3 July 2014 to the NDPP informing him about the above sequence of events regarding the docket. We are advised that the NDPP officially responded to the letter on 20 August 2014 indicating that the NDPP is in a process of considering the matter and that Chauke may close his file.
- 5.4.11 Sometime in December 2014, the NDPP enquired from Chauke about the case and wanted to know whether the latter was still involved in the matter. Chauke was surprised by this enquiry from the NDPP as according to him (Chauke) he was instructed by the same NDPP to close his file on the matter. Chauke advised the NDPP that he had since close his file on the matter and was not dealing with it anymore.
- 5.4.12 We also consulted the DPP for North Gauteng, Mzinyathi in relation to this aspect of our investigation. Mzinyathi told us that he received a telephone call from the NDPP on or about 10 January 2015 asking him about his knowledge of the Rendition. Mzinyathi told the NDPP that he did not have a clue of what the NDPP was talking about. According to Mzinyathi the NDPP told him that he had received the docket in the matter from Chauke and that the matter fell under Mzinyathi's jurisdiction because Diepsloot was under Atteridgeville which fell under North Gauteng DPP. On the day this call was made, Mzinyathi was on leave. He only returned from leave



on or about 13 January 2015. Shortly after his return, the docket was delivered to his offices.

5.4.13 Mzinyathi spoke to his colleague the DDPP for North Gauteng, Baloyi regarding the docket and informed him that they must formulate a view on the matter. According to Mzinyathi sometime in March 2015 he received a report (being the Second Report) from the NDPP. This report summarised the statements in the docket and made its own recommendations as to who should be charged. Before Mzinyathi made his own recommendations, he approached the NDPP to understand certain things. The NDPP told him that there was a First Report and that he should read it as well. The NDPP provided him with a copy of the First Report. Mzinyathi shared this First Report with Baloyi and they discussed the potential charges to be brought against those implicated in the report.

5.4.14 Mzinyathi and Baloyi finalised their reading of the docket and the two reports and made recommendations on who should be charged and prosecuted. They sent their recommendations to the NDPP on 13 March 2015.

5.4.15 We are advised that on 31 March 2015 the NDPP wrote another letter to Chauke informing him that matter has been referred to Mzinyathi, who has recommended that all the accused including Dramat and Sibiya be prosecuted for inter alia kidnapping and defeating the ends of justice. This letter attached the letter addressed by Mzinyathi to the NDPP on 13 March 2015.

5.4.16 We are advised that the aforesaid letter from the NDPP inter alia states that the matter must be returned to the DPP South Gauteng because it now falls under the jurisdiction of the DDP South Gauteng since 1 December 2014. As from that date Diepsloot fell under the South Gauteng in terms of the Government Notice No 861 of 31 October 2014.

5.4.17 According to Chauke on 1 April 2015 he received a box consisting of the docket with a letter containing Mzinyathi's recommendations. On even

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date he received a letter from the Head of National Prosecution Services to conduct specific investigations in the matter.

5.5 Any other matter that might come to your attention during the investigation which is relevant to your conclusions and findings

5.5.1.1 In the context of the sequence of events described at 3.2.2, we have specific concerns that remain unanswered, as to how the docket was dealt with after it was received by the NDPP. These concerns are as follows-

5.5.1.1.1 In February 2014 the NDPP referred the matter to Chauke, the DPP for South Gauteng at a period when Diepsloot fell under the jurisdiction of the DPP for North Gauteng. This amounted to a transfer of jurisdiction in terms of section 22(3) of the National Prosecuting Authority Act;

5.5.1.1.2 In April 2014, the NDPP accepted the docket back from McBride without having withdrawn the jurisdiction from Chauke;

5.5.1.1.3 In January 2015 the NDPP referred the matter to the DPP for North Gauteng after he was aware the jurisdiction in respect of Diepsloot had been changed to fall under the jurisdiction of the DPP for South Gauteng. This amounted to another transfer of jurisdiction in terms of section 22(3) of the National Prosecuting Authority Act; and

5.5.1.1.4 the NDPP failed to take action in respect of the recommendation made by Mzinyathi on 13 March 2015 but rather sent the docket back to Chauke to make a decision on the matter. This amounts to a review by Chauke of the recommendation made by Mzinyathi. This was done despite the fact that in terms of section 22(2)(c) of the National Prosecuting Authority Act, the NDPP himself is authorised to review a decision to prosecute or not to prosecute taken by a DPP. There is no authority in the National Prosecuting Authority

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Act which allows a DPP to review a decision taken by another DPP.

5.5.1.2 The reason that the concerns mentioned at 5.5.1.1 have not been addressed relates to the fact that the NDPP failed to respond to our request to meet with him. Interestingly, the NDPP is the only employee of the NPA involved in this matter who failed to meet with us in response to a request to meet.

5.5.1.3 In the absence of any explanation regarding the questions raised at 5.5.1.1, it is our view that the role of the NPA in dealing with the First and Second reports, should be investigated.

6 SECTION D: RECOMMENDATIONS

6.1 Maluleke

For the reasons set out in the First Report, we recommend that both criminal charges (contravention of the Immigration Act, kidnapping, fraud, forgery and uttering, defeating the ends of justice or obstructing the administration of justice, and assault) and disciplinary charges (in his capacity as employee) be brought against Maluleke in his capacity as an employee.

6.2 Dramat

For the reasons set out at 5.3.1 above, we recommend that both criminal charges (contravention of the Immigration Act, kidnapping, and defeating the ends of justice or obstructing the administration of justice) and disciplinary charges be brought against Dramat in his capacity as an employee.

6.3 Sibiya

For the reasons set out at 5.3.2 we recommend that both criminal charges (contravention of the Immigration Act, kidnapping, and defeating the ends of justice or obstructing the administration of justice) and disciplinary charges be brought against Sibiya in his capacity as an employee.

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6.4 Others

- 6.4.1 We recommend that W/O Makoe be charged criminally for assault and that disciplinary action be taken against him in his capacity as an employee.
- 6.4.2 We recommend that 'Leburu' Radebe be charged criminally for assault and disciplinary action be taken against him in his capacity as an employee.
- 6.4.3 We recommend that Nkosi be charged criminally for assault and disciplinary action be taken against him in his capacity as an employee.
- 6.4.4 We recommend that anyone involved in the fraud and forgery of the Home Affairs documents which were submitted in support of the deportation during the Rendition, be charged with forgery and uttering as well as fraud.
- 6.4.5 In the absence of any information as to which of the three co-signatories were responsible for the deletion of information from the First Report, we recommend that Khuba, McBride and Sesoko be charged criminally for defeating the ends of justice or obstructing the administration of justice, and that disciplinary charges be brought against them in their capacity as employees.

7 **Benefit of report**

- 7.1 The views expressed herein are given solely for the benefit and information of the Minister of Police, to whom it is expressly addressed.
- 7.2 The views expressed herein are given only -
- 7.2.1 with respect to South African law in force as at the date hereof; and

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7.2.2 in the context of practices and standards developed under South African law which have been applied and observed in light of our experience as South African attorneys.

7.3 No opinion is expressed or implied as to the laws of any jurisdiction other than South Africa and we express ourselves not to be experts on, or even generally familiar with, any laws other than the laws of South Africa.

8 Limitation of liability

This report is given strictly on the basis that all and any claims of whatsoever nature arising as a result of reliance on this report shall only be capable of being brought and/or instituted (and may only and exclusively be brought and/or instituted) against Werksmans Inc and its assets, including the proceeds of the professional indemnity insurance held by it ("PI Insurance"). The directors, partners, professionals with similar status, consultants and other employees of Werksmans Inc or any of its affiliates shall not be liable in their personal capacities for any claim whatsoever arising, directly or indirectly, in connection with the opinions given in this letter, and no such claims shall be enforceable against their respective personal estates.

This report was signed on 24 April 2015 at Sandton

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Werksmans Attorneys

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MR. KHUBA
TELEPHONE CONVERSATION

MR. KHUBA: Mme Netsianda.

MS. NETSIANDA: Yes Mr. Khuba how are you?

MR. KHUBA: I am fine.

MS. NETSIANDA: Okay. I have been asked
(inaudible) where are you? I must come and
serve you with a letter.

MR. KHUBA: Okay I am in Polokwane.

MS. NETSIANDA: You are in Polokwane?

MR. KHUBA: Yes.

10 MS. NETSIANDA: Because, apparently the
minister said you must have the letter
today and I am still in the office, me.
which means I must drive right now. Will
you wait for me and then I will call you
when I am closer. So that we meet
somewhere?

MR. KHUBA: Yes. Yes.

MS. NETSIANDA: Okay. No, thank you so
much for your understanding.

20 MR. KHUBA: Okay. Thank you.

MS. NETSIANDA: Sure.

MR. KHUBA: Yes.

END OF CONVERSATION

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DISCIPLINARY PROCEEDINGS

In the matter between

IPID

The Employer

And

Matthews Sesoko

The Employee

CONFIRMATORY AFFIDAVIT

I the Undersigned

Nomkhosi Cleopatra Netsianda

Do hereby state under oath as follows that

I am an adult female person of 32 Kiloki Village Savannah Country Estate, Pretoria East 0164 and a suspended employee of IPID. I am holding a position of Chief Director Corporate Services at IPID.


The facts deposed hereto are within my personal knowledge and I believe same to be both true and correct.

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[Signature]

1. I have read and understood the contents of the affidavit deposed to by Mr Matthews Sesoko.
2. I hereby confirm same in so far as they relate to me regarding the circumstances around the handing of a letter to Mr Khuba.
3. I confirm in addition that upon receiving instructions from the current Acting Executive Director Mr Kgamanyane, he specifically told me in no uncertain terms that the aforesaid letter must be delivered to Mr Khuba that same day and that those were the specific instructions of the Minister. At IPID when we refer to the term "Minister" it is the Minister of Police that we normally refer to.
4. I duly complied with the instruction and called Mr Khuba to arrange for delivery of the letter as properly articulated in the annexure to Mr Sesoko's affidavit marked "MS6"



DEPONENT

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Beromi on the 03 day of MAY 2016, the regulations contained in Government Notice No R 1258 of 21 July 1972, as amended, and Government Notice No R 1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS

Moruthane Lekoko Mateme
46 Victoria Avenue
Commissioner of Oaths
Practising Attorney
RSA

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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG PROVINCIAL DIVISION, PRETORIA)**

CASE NO: 6588/15

In the matter between:

ROBERT MCBRIDE

Applicant

and

MINISTER OF POLICE

First Respondent

MINISTER FOR PUBLIC SERVICE AND ADMINISTRATION

Second Respondent

SUPPORTING AFFIDAVIT

I, the undersigned

INNOCENT KHUBA

do hereby make oath and state as follows:

- 1 I am an adult male, currently suspended from my position as Provincial Head of the Independent Police Investigative Directorate (IPID), Limpopo.
- 2 The facts set out in this affidavit are true and correct, and are within my personal knowledge unless the context indicates otherwise.

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3 I have read the answering affidavit filed by the First Respondent (the Minister) and wish to address the allegations made in respect of the following:

3.1 How the complaint was received by IPID and the initial investigation of the matter; and

3.2 The nature of and reasons for the differences between the preliminary IPID report (of 22 January 2014) and the final IPID report that I read and signed (of 18 March 2014), particularly as regards the findings and recommendations made in respect of Dramat and Sibiya.

4 I have also read the replying affidavit of Mr Robert McBride, and confirm the correctness of its contents insofar as what is stated there concerns me.

HOW THE COMPLAINT WAS ASSIGNED TO IPID AND THE INVOLVEMENT OF SAPS' CRIME INTELLIGENCE

5 I was first assigned to investigate the involvement of the SAPS, including members of the DPCI, in the illegal rendition of Zimbabwean nationals towards the end of 2011, although I was only given the green light to investigate in October 2012.

6 The circumstances in which the case was initially investigated and assigned to me were very unusual.

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- 6.1 During and about October 2011, allegations about the SAPS involvement in the illegal rendition of Zimbabwean nationals were first reported in the *Sunday Times*. The media reports prompted a Parliamentary question from a COPE Member of Parliament to the Civilian Police Secretariat ("the Police Secretariat") on 28 October 2011, about the alleged SAPS involvement in the illegal rendition of Zimbabwean nationals.
- 6.2 Shortly thereafter, the then Executive Director of IPID, Mr Francois Beukman ("Beukman") instructed Matthews Sesoko, the then Acting Chief Director of Investigations at IPID ("Sesoko") to initiate an investigation into the matter. Beukman advised Sesoko that the head of the Police Secretariat, Ms Jenny Irish-Qhobosheane ("Irish-Qhobosheane") had requested an investigation into the allegations raised by COPE. This meeting is confirmed by Sesoko, whose affidavit accompanies this affidavit.
- 6.3 Sesoko appointed me to head the investigation. However, not long thereafter, Beukman, Sesoko and I were called to a meeting with Irish-Qhobosheane. We were instructed to hold-off the investigation apparently on the instruction of the then Minister of Police, Mr Nathi Mthethwa.
- 6.4 About a year later – during or about early October 2012 – Colonel Moukangwe ("Moukangwe") of the SAPS Crime Intelligence Gathering division ("CIG") came to Sesoko's office at IPID. Moukangwe handed over the docket that CIG had opened into the

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renditions matter. Moukangwe advised Sesoko that an investigation had already been conducted by CIG, and that the matter was being handed over to IPID on the instructions of the Minister of Police (Mr Nathi Mthethwa). After consulting the new Acting Executive Director of IPID, Ms Koekie Mbeki ("Mbeki"), Sesoko handed over the CIG's docket to me for investigation. These facts are confirmed by Sesoko.

- 6.5 Shortly after I began my investigations, I briefed Mbeki on the case and informed her that I would consult with Sesoko in the course of the investigation. This was common practice. As the National Head of Investigations at IPID, Sesoko was ordinarily consulted and briefed on all national investigations.
- 6.6 To my surprise, Mbeki categorically instructed me not to work with or discuss the investigation with Sesoko. Mbeki instructed me instead to collaborate with Moukangwe from CIG in the conduct of the investigation, and to keep this collaboration secret. This was the first and only time that I had received such instructions about an investigation.
- 6.7 Mbeki's instruction was an unusual and problematic one because members of the CIG were themselves involved in the arrest of the Zimbabwean nationals that were subsequently rendered to Zimbabwe. It also seemed to be a problematic instruction given the widely known history of animosity between Lieutenant-General Richard Mdluli ("Mdluli"), the previous Divisional Commissioner of

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CIG, and Major-General Shadrack Sibiya ("Sibiya"), then the Provincial Head of the DPCI for Gauteng Province and who was one of the subjects of the investigation.

6.8 I was instructed by Mbeki to report directly to her in the matter, and to keep her abreast of the progress in the investigation through regular reports. I sent weekly progress reports on the investigation to Mbeki, and also periodically sent her copies of the working draft of the investigation report.

7 On perusing the file of CIG's investigation of the rendition, I became concerned that the investigation that CIG had conducted was not reliable or adequate. This was because –

7.1 The CIG investigation file comprised of statements of CIG members who were involved in the rendition operation, as well as statements of Zimbabwean nationals (including the victims of the illegal renditions and relatives of victims). However there were no statements from any Home Affairs officials or members of the Tactical Operations Management Section of the DPCI ("TOMS") who were allegedly involved in the rendition operation.

7.2 The statements that CIG had obtained, particularly those of the CIG officials, were replete with hearsay. Also, the language used to describe Sibiya in one of the CIG witness statements was remarkably similar to the language used by a CIG official to describe Sibiya in another case involving Sibiya that I was

investigating (under case number Boksburg CAS 322/04/2011, 486/03/2011 and 21/04/2011). While I do not have access to the Boksburg docket (it is in the possession of the Acting Executive Director, Mr Kgamanyane), and do not recall the exact wording used in the affidavit in that case, Sibiya is described in both as the policeman dressed in a suit and sitting in a BMW.

7.3 It also seemed suspicious to me that certain of the Zimbabwean nationals identified Sibiya by name in their affidavits obtained by CIG, although it was unlikely that they would know his identity.

7.4 I note that, in his interview with Werksmans, Advocate Mosing expressed similar concerns about the credibility of the CIG officers' evidence. I attach the relevant excerpt from his transcript as "IK1".¹

8 On 4 March 2014, at the very first meeting that I had with the McBride, I conveyed my concerns about the manner in which the rendition matter was brought to IPID and assigned to me for investigation. I told McBride that I felt uncomfortable and suspicious of the involvement of CIG in the investigation, and the instruction that I was not to discuss the investigation with Sesoko but to report directly to Mbeki.

9 I had, however followed Mbeki's instructions in the investigation of the matter. I had conducted the investigation subject to the oversight and

¹ Transcript of Mosing interview with Werksmans' Attorneys, 7.04.2015, pp. 7, lines 2-6 and 12, lines 1-5.

involvement of Moukangwe of CIG, and I did not discuss the investigation with Sesoko.

- 10 I also worked under the guidance of Advocates Mosing and Moeletsi of the NPA (Special Projects Division in the office of the NDPP), who were involved in CIG's investigation before IPID became involved. Mosing told me that, before the matter was referred to IPID, Colonel Moukangwe had approached the NPA to prosecute General Sibiya on the strength of the CIG's investigation, but the NPA had declined to do so.

THE SUBMISSION OF THE JANUARY 2014 REPORT

- 11 On 22 January 2014, I submitted to Advocate Mosing of the NPA ("Mosing") what I will, for the sake of convenience, refer to as "the January 2014 report" of the IPID investigation.
- 12 I was placed under considerable pressure by Mosing to submit a signed version of the January 2014 report, with recommendations, so that he could hand over the matter to the DPP. Towards the end of 2013, Mosing started insisting that I finalise my investigations and give him the report. My sense was that he was under a lot of pressure to wrap up the case.
- 13 While I did as I was instructed, I was not satisfied that the January 2014 report was in fact a final report because my investigations were not complete. After I submitted the January 2014 report I continued with the

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investigation. I always intended to supplement the docket with the outstanding evidence and to send an updated report when my investigation was properly completed.

14 At the time that I signed the January 2014 report and sent it to Mosing, the following material evidence was still outstanding:

14.1 Sibiya had not yet provided me with his warning statement, and I had not yet incorporated Dramat's warning statements (received in October and November 2013). These statements were important because the recommendation at that stage was to prosecute charges against Sibiya and Dramat.

14.2 A warning statement from Lieutenant-Colonel Leonie Verster, the Section Head of TOMS and Captain Maluleke's immediate superior at SAPS, was still outstanding.

14.3 A statement from Irish-Qhobosheane confirming the basis for the Police Secretariat's referral of the complaint to IPID.

14.4 An expert analysis of the cell phone data, which mapped the location of calls and SMSes sent and received at the relevant times. While an initial expert report analysing the cell phone data had been received by that stage, that report did not map the location of the cell phone data. This information was critical for confirming the allegations (made in certain of the statements of CIG officials and Zimbabwean nationals that were obtained by

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CIG) that Sibiya was present at the arrests of the Zimbabwean nationals in November 2010.

14.5 I was also still awaiting an expert analysis of the two statements that Colonel Madilonga ("Madilonga") had made. Madilonga's first statement was obtained by Warrant Officer Nthlamu of the DPCI's Integrity Management Unit on 30 November 2011. I obtained the second statement on 8 April 2013. I sought an expert analysis of the second statement from Precision Forensics, because Madilonga's evidence was essential to sustaining any charges against Dramat and I had concerns about Madilonga's credibility. The main red flag was a recordal in Madilonga's second statement, which suggested that he had been placed under pressure to give manufactured evidence in November 2011:

"In 2012 of which I cannot remember the month and date, Captain Maluleke phoned and told me that there is a person from Head Office who will be coming for investigation and that I must cooperate with him. Later a person came to Thohoyandou and he had a draft statement. He told me that there is a problem with the operation which was once done with the Hawks and they would like my statement to be in a particular format. He told me that the statement is for covering up and the parliament has some issues about the operation. I read the statement and realize that it was to close the gaps and not a true reflection of what happened."

14.6 A copy of Madilonga's three statements are attached marked IK2.

My concerns about Madilonga's credibility were confirmed by the expert analysis that I subsequently received from Precision Forensics on 17 March 2014, a copy of which is attached marked IK3. Precision Forensics concluded that Madilonga's statement

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should be included in the ongoing investigation as his statement "proved to be deceptive".

15 After I sent the January 2014 report to Mosing, I continued to gather and analyse the evidence. On 27 February 2014, I sent Mosing the expert report on General Sibiya's cellular phone data. Mosing replied on 28 February 2014 and advised me to deal directly with the DPP of South Gauteng and to send any additional evidence directly to the DPP. Mosing's email is attached as annexure IK4.

16 I wish to point out that the Werksmans' report incorrectly states that "According to Khuba, all the individuals mentioned above [Dramat, Sibiya, Maluleke and Verster] had refused to provide warning statements"² and that, therefore, "according to Khuba, the First Report was submitted as a "final report".³

16.1 I deny that I made any such statement. The transcript of my interview at the Werksmans' inquiry confirms the misrepresentation. I explained at the interview (excerpt attached marked IK5) that when I submitted the January 2014 report,

"I was still waiting. I was still waiting for the cellphone records analysis, if I'm not mistaken, and I was still waiting for the statement from Sibiya, the statement of Dramat was not part of the report, the statement of the

² Werksmans' report at para 3.1.19. See also para 3.1.33.

³ Werksmans' report para 3.1.20.

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Secretary of Police was not part of the report, and the other statement I cannot remember, but it was quite a substantial number of statements.⁴

16.2 Dramat had not refused to give warning statements. He gave two warning statements on 23 October 2013 and 23 November 2013 (attached as IK6 and IK7), but these statements had not yet been incorporated into the January 2014 report.

16.3 Sibiya had advised that he would respond to formal questions,⁵ and did indeed furnish a warning statement on 21 February 2014. A copy of that statement is attached as IK8.

17 In addition the outstanding evidence, I was also concerned that the formalities required for finalising an IPID investigation could not be concluded before I submitted the January 2014 report. I conveyed these concerns to Mosing at the time.

18 I indicated to Mosing that the report had to be signed off by the Acting Executive Director of IPID and that it was contrary to IPID's policy for an investigative report to be signed off only by the investigator. I explained to Mosing that meeting these requirements was difficult at the time, because –

18.1 With the imminent appointment of McBride as the Executive Director, Mbeki was seldom at the office and I could not reach her

⁴ Interview 27 March 2015, Transcript, p. 41.

⁵ Werksmans' report para 3.1.25.1.2.

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to get her authorisation and signature. When I tried to contact her telephonically, I was told by Mbeki's PA, Tshiamo Mahibila, that Mbeki was only signing off financial documents and not investigation related requests.

18.2 Obtaining another signature on the report was also problematic. I had been instructed by Mbeki to keep Moukangwe's involvement in the investigation secret, so he could not sign the report. I had also been given specific instructions not to involve Sesoko in the investigation, so I could not approach him to review and sign the report.

19 While I conveyed these concerns to Mosing, he told me that I must, nevertheless, sign the January 2014 report and send it to him, as the investigation had been going on for too long.

FINALISING THE RENDITIONS INVESTIGATION REPORT

20 I firmly deny that there was any improper motive – on my part, Sesoko or McBride – in the changes that were made to the renditions investigation report in March 2014. There was no attempt on our part to exclude any material evidence from the report. The changes were made to reflect what we considered to be the credible evidence that would withstand scrutiny in court.

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- 21 After Sesoko and I were tasked by McBride with finalising the report, I would visit the Pretoria office from Limpopo whenever I could. I would sit at Sesoko's computer to make changes to the draft as we discussed them. Sesoko and I re-evaluated all the evidence and debated what findings could reliably and sustainably be made on the evidence. I would then effect the changes to the report on Sesoko's computer.
- 22 Sesoko's input was important because he has a prosecutorial background, so has a good understanding of what findings a prosecutor will accept as sustainable. He also brought a more objective perspective to bear on the evidence, because he had not been involved in the investigation.
- 23 In finalising the report and presenting the final report to McBride for authorisation, we sought to conduct a thorough, critical and objective review of the totality of the evidence and to present only recommendations that were supported by credible evidence.
- 24 I have traversed each of the differences between the January 2014 report and the March 2014 report highlighted by the Minister in his answering affidavit. The Minister has relied on the comparison of the two reports contained in the Werksmans' report.⁶

⁶ The differences are summarised in the Minister's answering affidavit at para 44 (with subparagraphs incorrectly numbered as para 42), and are tabulated in the Werksmans' report at pp. 34 to 45 of the report.

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- 25 I explain each of the differences that the Minister contends evidences a sinister motive to "suppress" evidence against Dramat and Sibiya. There is no basis for the Minister's allegations.
- 26 First, it is correct that the summary of Madilonga's statement was changed to remove Madilonga's description of a call that Madilonga made to Dramat about two weeks before 8 November 2010. The crux of what was removed was the statement that *"He [Maluleke] phoned General Dramat on his cell phone and he responded by saying that he is aware of the Zimbabwean police and he must let them come"*.
- 27 This reference was removed because there was no evidence to corroborate Madilonga's allegation of what Dramat had stated when called by Madilonga, and because the content of the call could not otherwise be verified. The evidentiary value of the statement was thus weak.
- 28 The statement also did not advance the case against Dramat in any material way, because there was no dispute that Dramat met with Zimbabwean police officials from time to time. This was admitted by Dramat in his warning statement.⁷ Even if Dramat had known of, and admitted, the Zimbabwean police officials to South Africa, this did not

⁷ Dramat warning statement of 23 November 2013 (Annexure IK7) at para 25.

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evidence any knowledge or involvement on Dramat's part of the illegal rendition operation.

- 29 The fact that the call was made and received by Dramat was not suppressed, as this was reflected in Dramat's cell phone records contained in the docket. Also, the fact that Madilonga was instructed to call Dramat by his superior, Brigadier Makusha is recorded at p. 10 of the report. The full statement of Madilonga was also contained in the docket.
- 30 Second, the contents of the success report of 4 February 2011 (annexure NM3 to the Minister's answering affidavit) were changed in the March 2014 because the credibility of this report was doubtful.
- 31 What was removed was the following: *"Paragraph "A1" of the report states that on 05/11/2010, General Dramat held a meeting with Zimbabwean police at DPCI office about the Nationals who shot and killed one of their senior officers. Paragraph "3" states that Captain Maluleke was tasked to trace and arrest the said Nationals."*
- 32 As is recorded in both the January and March 2014 reports (at para 5.3), this success report was generated on Maluleke's laptop, which was seized by IPID. The provenance of this report made it inherently unreliable.

- 33 While Verster had signed the report, she did not attend the alleged meeting, and thus could not attest to the accuracy of the report's contents. No other person could attest to the fact of the alleged meeting, or to what is recorded in the success report as having been stated at the meeting.
- 34 The only other evidence that suggests that Dramat met with Zimbabwean police officials is the statement of Mr McIntosh Polela, the former spokesperson of DPCI (attached to the Minister's answering affidavit as NM7). But Polela only joined the DPCI in December 2010 – that is, after the alleged meeting of 5 November 2010 and so his evidence could not be relied upon to prove the alleged meeting.
- 35 There was also no evidence that Dramat in fact received the success report.
- 36 The unreliability of the success report is highlighted in the conclusions in the March 2014 report, where the following is stated (at the sixth bullet):
"The success report that claim[s] that Lt General Dramat had a meeting with the Zimbabwean police lacks detail about the meeting itself. There is no indication of what was discussed and who was part of the meeting. It is on this basis that a prima facie case cannot be premised on speculation, but need[s] corroborated facts."
- 37 The entire success report was, in any event, contained in the docket.

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- 38 Third, the reference to an email allegedly sent by Maluleke to Dramat's personal assistant (with more than 20 photographs of the suspects who were arrested and the SAPS members involved in the operation) was removed from the March 2014 report because the fact of its receipt – by either Dramat or his personal assistant – could not be confirmed.
- 39 Maluleke's email records show that the email was sent only to Dramat's personal assistant, Phumla, and not to Dramat. The email was not marked for Dramat's attention.
- 40 The only response to Maluleke's email, which was found on Maluleke's computer, was an email from Phumla to Maluleke stating that she could not open the email because she was not at the office. No further response or activity appears in the email chain. Also, while the email identified photographs, the attached photographs could not be opened.
- 41 I point out that the comparison drawn in the Werksmans' report between the relevant passages in the January 2014 report and the March 2014 report is misleading. The Werksman's report (in the first row on p. 37) conflates the description in the reports of two separate emails sent by Maluleke, to suggest incorrectly that the March 2014 report sought to exclude only the reference to Dramat as a recipient of the email with photograph attachments.
- 42 Fourth, the details in the letter to stakeholders dated 20 August 2012, which described Dramat and Sibiya's visit to Zimbabwe in August 2010

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and Sibiya's appointment as coordinator on cross-border crimes between South Africa and Zimbabwe, were removed. Sesoko and I agreed that these details had little relevance and evidentiary value to the allegations, as they concerned a visit by Dramat and Sibiya of more than a year before. There was also no denial on the part of Dramat or Sibiya that they went to Zimbabwe on this occasion and of Sibiya's appointment as coordinator. In any event, the letter was contained in the docket.

- 43 Fifth, we removed the allegation in the January 2014 report that Maluleke had "routed to General Dramat" a letter describing the rendition of Moyo to Zimbabwe because it was not corroborated. The letter referred to was found only in electronic copy on Maluleke's computer. While the electronic copy was addressed to Dramat, there was no evidence that the letter was ever sent to and received by Dramat. The January 2014 report was thus inaccurate in suggesting that there was evidence that letter had in fact been sent to Dramat.
- 44 Sixth, as regards the amendments to the cell phone analysis:
- 45 The amendments to the analysis of Sibiya's cell phone records was informed by the expert mapping and location analysis of the cell phone records, which I only received after the January 2014 report.

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- 46 The import of the expert analysis is discussed at various points in the evaluation of evidence in the March 2014 report (including at pages 31 and 33), and is summarised in the findings as follows:

"The evidence that suggest[s] that Major General Sibiya was at the scene during the arrest of Zimbabwean nationals is contradicted by cell phone evidence that suggests that he was nowhere near the scene. It is clear that members of Crime Intelligence had been trying hard to pull Major General Sibiya into the operation. This can be deduced from the following quotations in their statements, "I saw a figure in a BMW and Warrant Officer Makoe referred to him as General Sibiya", and "I heard that General Sibiya was in a blue BMW". The cellphone record of Major General Sibiya was acquired and analysed by an expert, it was discovered that at the time the witnesses claim that he was at Fourways Shopping Centre, he was in Pretoria."

- 47 The reference to the fact that more than 30 SMSes were sent from Sibiya to Dramat (and other SAPS officials) was removed from the March 2014 report because it had no evidentiary value. Given the working relationship between Dramat and Sibiya, nothing could be deduced from the fact that Sibiya sent automated SMSes to Dramat. The content of Sibiya's SMSes could also not be ascertained, since I could not retrieve either Sibiya or Dramat's cell phones from the time. At the time of my investigation, I was told that these phones had been returned to DPCI Supply Chain, but the department no longer had them. It was thus impossible to establish, from an examination of the handsets, the content of the SMSes.
- 48 Also, since Dramat never responded to the SMSes sent by Sibiya it is not known and could not be verified whether these were even received.

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- 49 In respect of the cell phone analysis of Maluleke, the reference to the single SMS Maluleke sent to Dramat was removed because there was no evidence that this was received by Dramat. The reference to the interaction between Sibiya and Maluleke in the form of received and outgoing calls was also removed because the fact of the interaction of colleagues had no evidentiary value. The content of these calls was not known and impossible to determine.
- 50 Likewise, the reference to the cell phone interaction between Colonel Neethling and Sibiya was removed from the March 2014 report because the mere fact of this interaction between colleagues (Neethling reported directly to Sibiya) had no evidentiary value. However the statement by Neethling that *"he believed that he reported the operation to Sibiya"* was still recorded in the March 2014 report (at page 10).
- 51 Seventh, that the complaint was received from the Civilian Police Secretariat and the background to the investigation is detailed in the March 2014 report, at para 1.1 and 5.7. The fact of the deportation of the Zimbabwean nationals as 'illegal immigrants' is recorded in the March 2014 report, as well as Dramat's statement that *"all Zimbabwean nationals were deported through Home Affairs for being illegal immigrants"* (at p. 27). There were no material omissions in this regard.
- 52 Eighth, the allegations in the January 2014 report that the officers who were part of the operation in which Dube and Nyoni were arrested (on 11 January 2011) were personally congratulated by Dramat and were

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warned not to tell anyone about the operation is reassessed in the March 2014 report.

52.1 It is not correct (as the Minister suggests) that *"the March 2014 report is silent on this finding issue"*.⁸ The March 2014 report states the following in this regard:

"After the arrest of Johnson Nyoni, he was taken to DPCI head office in Silverton. At the DPCI offices photos were taken and members of TRT and Crime Intelligence corroborate each other in that regard. However, Constable Mkasibe stated that Lt General Dramat came to house number 3 from house number 1 and addressed them. There were six members of TRT and none of them ever mentioned the incident. If it is true that he addressed them, other people could have had a recollection of the incident more so because Lt General Dramat is the head of the DPCI. According to Constable Mkasibe and Constable Mugwenya, Lt General Dramat was with Colonel Polelo when he addressed them but Colonel Polelo cannot remember such event. It is clear that the version Mugwenya and Mkasibe [gave] are not corroborated and therefore do not provide basis for a prima facie case against Lt General Dramat."

52.2 The alleged 'congratulations incident' was doubtful. Even if it did occur, the context of the alleged incident rendered the meaning of any congratulatory statement by Dramat unclear. Gordon Dube, the other suspect arrested by CIG and the TRT unit on the same day, was wanted in South Africa on several charges of murder and robbery. This means that if Dramat did congratulate the SAPS members for the arrests that day (which was not corroborated), it may have been that he did so for the apprehension of a wanted suspect by the SAPS for the commission of violent crimes in South Africa.

⁸ Answering Affidavit para 42.9.

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- 53 Ninth, the reference to the letter sent by Zimbabwean authorities to Colonel Ntteni (which listed the names of two of the suspects wanted in Zimbabwe, and certain of the SAPS officers in the arrest of the Zimbabwean nationals) was removed from the March 2014 report because it had little evidential value. The letter was nevertheless in the docket.
- 54 There was no evidence that this letter was sent to Dramat – it was only sent to Colonel Ntteni of CIG. A copy of the letter, which is addressed only to Ntteni is attached marked IK9. Subsequent related correspondence was also circulated, but only among certain officers at CIG. This correspondence is attached marked IK10.
- 55 There is also no evidence to suggest that Dramat lied to Parliament, and did not genuinely believe that the named Zimbabweans had been deported as illegal immigrants (as he had been advised by Maluleke). In this regard, the March 2014 report stated (at p. 33) that:

"[W]hen the renditions issue hit the media at the end of 2011, acting National Commissioner of the South African Police Services Lt General Mkhwanazi (A99) called the head of DPCI Lt General Dramat to explain what happened. Lt General Dramat attended the meeting with Captain Maluleke and for the entire duration of the meeting, Captain Maluleke explained why he arrested Zimbabwean nationals. If Lt General Dramat had full knowledge of the purpose of the arrest, he could have provided an explanation or justification during the meeting thereby convincing the acting National Commissioner that the operation was both lawful and necessary. It is in the same breath that Captain Maluleke provided a report to Lt General Dramat which was used as a basis to respond to a parliamentary question."

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56 I trust that the above explanations will remove any misunderstanding as regards the contents of the March 2014 report.

57 I confirm that the March 2014 report is the only report that I consider to be a "final report" on the renditions investigation. The recommendations in the March 2014 report are informed by all the evidence, and it has been properly subjected to internal review and authorisation, in accordance with IPID policy.


INNOCENT KHUBA

THUS DONE SIGNED AND SWORN TO BEFORE ME AT *Polokwane*
THIS THE *19th* DAY OF *June* 2015 AT *17:35*

THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO OBJECTION TO SWEARING THE PRESCRIBED OATH AND THAT SAME IS BINDING ON HIS CONSCIENCE.


COMMISSIONER OF OATHS

CAPACITY **LEON FREDERICK DE LANGE**
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
LEGNAMPARK
20 WATERMELON STREET
POLOKWANE R.S.A.

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ipid

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Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabilo Street
Faranani Estate
Polokwane
0700

07 July 2015

Dear Mr Khuba

RE: NOTICE TO ATTEND DISCIPLINARY ENQUIRY

1. You are hereby given notice to attend a disciplinary hearing in terms of clauses 6 and 7 of the Disciplinary Code (Paragraphs 15 and 16 of Chapter 7 of the SMS Handbook).
2. You are employed by the Independent Police Investigative Directorate ("IPID") as the Provincial Head: Limpopo Province. You, together with Mr Matthews Sesoko have been charged with acts of misconduct.
3. The scheduled disciplinary enquiry will take place on Friday, 17 July 2015 at the Curator Building, 6th Floor, Cnr Nelson Mandela Drive and Pretorius Street, Pretoria starting at 10h00. If you do not attend and cannot give reasonable grounds for failing to attend, the meeting will be held in your absence.
4. I have appointed Advocate William Mokhari SC together with Advocate Thembeke Ngcukaitobi and Hogan Lovells Attorneys as initiators and pro forma prosecutors.
5. I have appointed Advocate Patrick Ngutshana of the Johannesburg Bar Association as an independent Chairperson of the enquiry. At the conclusion of the enquiry, the Chairperson will submit a finding to me on whether or not you are guilty of any of the allegations made against you.
6. You are entitled to legal representation at the disciplinary enquiry at your own cost and you are also entitled to be represented by a fellow employee if you wish, and to call witnesses, to cross-examine witnesses called on behalf of the employer, and to lead evidence in your own defence.

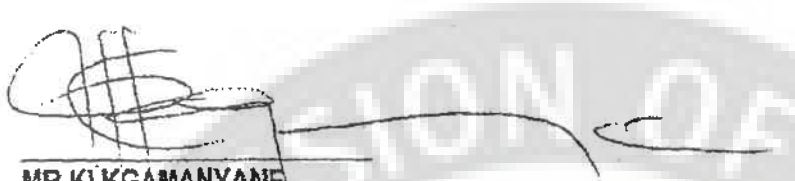
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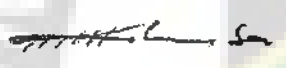
NOTICE TO ATTEND DISCIPLINARY ENQUIRY / MR. IH KHUBA

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7. If the enquiry holds that you are guilty of misconduct, you may present any relevant circumstances in determining the disciplinary sanction.
8. Attached hereto is a copy of the charge sheet.

Yours faithfully


MR KI KGAMANYANE
ACTING EXECUTIVE DIRECTOR


SIGNATURE OF MEMBER
DATE: 21/07/07

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DISCIPLINARY ENQUIRY

In the matter between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Employer

and

INNOCENT KHUBA

First employee

MATTHEW SESOKO

Second employee

AGREEMENT BETWEEN THE EMPLOYER AND INNOCENT KHUBA

INTRODUCTION

1. The First Employee, Innocent Khuba ("Khuba"), was charged with dishonesty and defeating the ends of justice as more fully set out in the charge sheet attached hereto marked "A".
2. Pursuant to the institution of disciplinary action against Mr Khuba, the parties have reached agreement on 23 September 2015.
3. The Parties wish to record in writing the terms of the agreement, which terms they record below.

TERMS OF AGREEMENT

4. Mr Khuba being legally represented, freely and voluntarily pleads guilty to the charges proffered against him as set out in annexure A.
5. The Employer will impose a sanction of a final written warning valid for 6 months against Mr Khuba.
6. Mr Khuba suspension will be uplifted and he will report for duty on Monday, 28 September 2015.

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7. Despite the seriousness of the offence the Employer is satisfied that Mr Khuba's candid and openness about the offence, the fact that he did not waste the Employer's time by engaging in a protracted disciplinary enquiry and his remorse to be a sufficient mitigation against a sanction of dismissal which ordinarily would have been appropriate.

GENERAL

8. This document contains the entire agreement between the parties.
9. Neither party shall have a claim arising from any undertaking, representation or warranty not included in this document.
10. No agreement to vary, add to or cancel this Agreement shall be valid unless reduced to writing and signed by or on behalf of both parties to the agreement.

SIGNED at PRETORIA on 23/8/2015 2015

For and on behalf of: **IPID**

Signature

Name of Signatory

Designation of Signatory

SIGNED at Pretoria on 2015/09/02 2015

For and on behalf of: **I KHUBA**

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Signature

INDRIST KHUR
Name of Signatory

EMPLOYEE
Designation of Signatory



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IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)

In the disciplinary enquiry between

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE Employee

And

INNOCENT KHUBA 1ST Employee

MATTHEWS 2ND Employee

AFFIDAVIT

I the undersigned

Innocent Khuba

Do hereby declare as follows that

1. I am an adult male currently employed by Independent Police Investigative Directorate (IPID) as a Provincial Head for the Limpopo Province.
2. The facts deposed hereto are within my personal knowledge and I believe same to be both true and correct and binding on my conscience.

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3. I will in this affidavit set out brief background facts regarding matters explained herein and thereafter explain circumstances in relation to Mr Sesoko.

Background Facts

4. I was immediately prior to making this sworn statement facing certain charges of misconduct relating to a matter that came to be commonly known as illegal rendition of Zimbabwean Citizens (rendition or rendition matter).
5. I was appointed on or about 2012 as the lead investigator in the rendition matter by Ms K Mbeki (Ms Mbeki). Upon my assignment to this matter Ms Mbeki gave me specific instruction not to involve Mr Sesoko in the investigations and that I should instead co-operate with Colonel Moukangwe of SAPS Crime Intelligence, Advocate Mosing and one Adv Moeletsi.
6. In the normal course of events in terms of IPID processes I must liaise with Mr Sesoko when conducting the investigations.
7. I must also state that Advocate Mosing and Advocate Moeletsi are not IPID employees.
8. In the course of my rendition investigation I submitted various progress reports to Ms Mbeki and Advocate Mosing. In respect of one of the progress reports, with which I also surrendered the docket, Advocate

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Mosing insisted that it should be signed. Mr Sesoko was not present or aware that I had submitted the report to Adv Mosing.

9. In view of the fact that Ms Mbeki had gone awol and therefore not available to sign, Advocate Mosing advised that I should append my signature to it. Normally Ms Mbeki would have been the person legible to sign this report as required by Advocate Mosing. Upon Mosing's insistence I voluntarily signed this report before handing same to him. For purposes of convenience, I would refer to this report as the January report.
10. At the time of submitting the January report Advocate Mosing was aware of the outstanding investigations.
11. At or about this time which was about March 2014, Mr Robert McBride (McBride) was appointed as the new Executive Director. Like all other persons who were dealing with what is termed high profile cases, I gave a briefing to him on the high profile matters that I was investigating including the renditions matter and also that I was instructed by Ms Mbeki not to include Mr Sesoko in the investigation. I further advised McBride that I have now completed all outstanding investigations as requested by Advocate Mosing and that I have already requested retrieval of the docket from the Director of Public Prosecution (DPP).
12. McBride instructed me to henceforth include Mr Sesoko in the further investigations if any and in finalising the renditions report.

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13. After retrieving the docket from the DPP I proceeded to work with Mr Sesoko in finalising the renditions report. This was in March 2014. I emailed one of the progress reports to Mr Sesoko's computer from which we proceeded to finalise the renditions report based on all the evidence available. I worked on Mr Sesoko's computer when finalising the report.
14. In compiling the final report Mr Sesoko would assess the evidential value of assertions made in the report and I would input into the report submissions that are supported by the evidence available.
15. I wish to state categorically except for what I stated above that neither McBride nor Sesoko instructed me to either make any specific changes in the report or to exonerate any person in the report.
16. During January or February 2015 I was phoned by Mr Sesoko inquiring whether I have knowledge of the signed report dated January 2014 (The January Report).
17. I could not immediately recall this specific report and only did so when two pages of the report were sent to our spokesperson, one Mr Dlamini, by a Journalist by the name Mr Mzilikazi wa Afrika.
18. It was only at this time that remembered that it is the report I had previously sent to Advocate Mosing.
19. Hitherto Mr Sesoko and McBride were not aware of this fact or existence of the January report. Both Gentlemen became aware of the unfolding events when an inquiry was made by the Journalist aforesaid.

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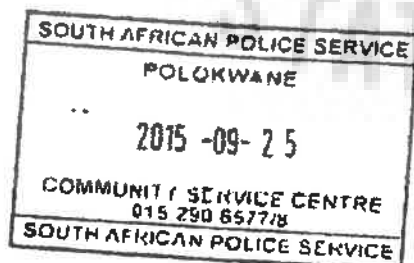
My Guilty Plea

20. In respect of my plea to the charges that I was facing I do not in any way given the manner in which the charge/s are phrased implicate or intend to implicate or in any manner suggest that Mr Sesoko is also guilty of the charge/s that he is facing.

21. In fact in my plea bargain with my employer, it was also agreed though same is not included as a term in the settlement agreement that I am free to testify for Mr Sesoko should he find it necessary to call me as a witness.


DEPONENT

THIS DONE AND SIGNED BEFORE ME AT Polokwane THIS 25 DAY OF September 2015. AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).




C/L no 10187
COMMISSIONER OF OATHS

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ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X941, Pretoria, 0001, City Forum Building, 114 Madiba Street, Pretoria
Tel: (012) 399 0026 Fax: (012) 399 0140
Email: ikgamanyane@ipid.gov.za Web: www.ipid.gov.za

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabile Street
Faranani Estate
Polokwane
0700

BY HAND

29 September 2015

Dear Mr Khuba

RE: YOUR PLEA OF GUILTY AND SANCTION

1. On 06 July 2015, you and Mr Sesoko were charged together in a disciplinary enquiry with a count of dishonesty and defeating the ends of justice in terms of the charge sheet that I annex hereto for your benefit. On 23 September 2015, you attended a disciplinary enquiry in which you were represented by your attorney, Mr Phoko which was chaired by Advocate Patrick Ngutshana and Mr Sesoko did not attend due to ill-health. As a result of Mr Sesoko's non-attendance, your disciplinary enquiry was separated from that of Mr Sesoko.
2. Mr Sesoko's disciplinary enquiry was postponed by agreement to 01 December 2015. Your disciplinary enquiry was proceeded with in which you pleaded guilty to the charge of dishonesty and defeating the ends of justice, as framed in the charge sheet. As a result of your guilty plea, I had agreed that despite the seriousness of the offence that you have committed, and that it warranted a dismissal, I have taken into account that you were open in admitting your guilt, and decided to agree to a final written warning instead of a dismissal. A settlement agreement to that effect was concluded on that day and signed by yourself in the presence of your attorney. You pleaded guilty to the charge, freely and voluntarily.

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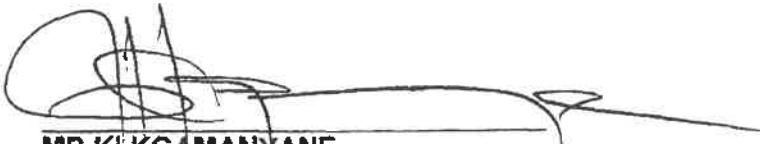
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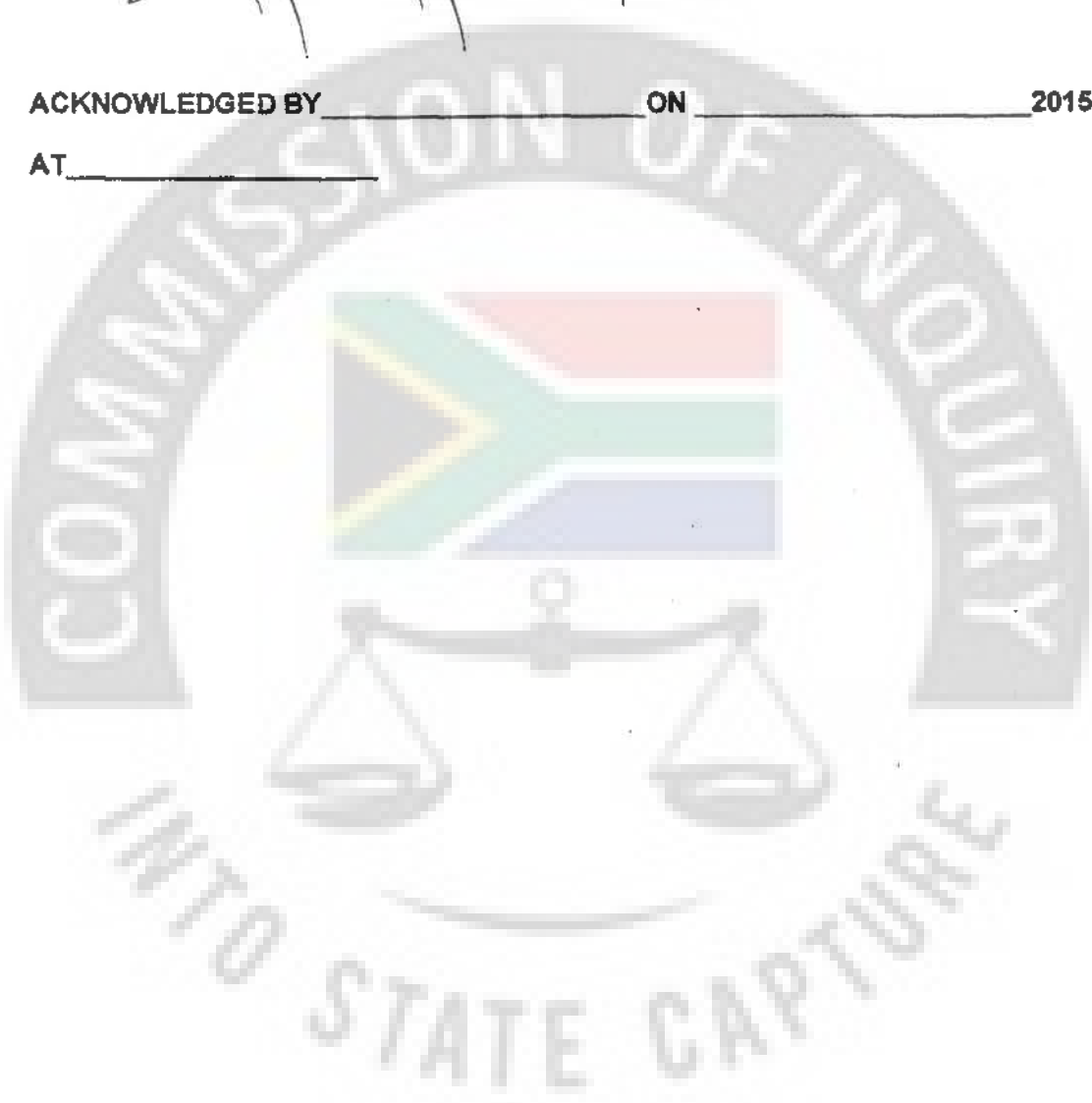
3. The settlement agreement containing your guilty plea and the sanction was read out to the chairperson in the enquiry who then made a ruling in which he confirmed its contents and pronounced you guilty of the charge. The enquiry then terminated on that day, 23 September 2015. A copy of the settlement agreement and Annexure "A" (the charge sheet) is attached.
4. On Friday, 25 September 2015, in breach of your guilty plea and the agreement for a lenient sanction short of dismissal as contained in the settlement agreement, and without my knowledge or consent deposed to an affidavit in Polokwane, which contradicted the terms of your guilty plea as contained in the settlement agreement. I, as the Acting Executive Director learned about the existence of the affidavit in the media. On Monday, 28 September 2015, I phoned you at your office to verify whether the media reports that you have after the disciplinary enquiry was finalised on Wednesday, 23 September 2015, deposed to an affidavit on the same subject matter of the completed disciplinary enquiry.
5. You confirmed that indeed you have deposed to such an affidavit because Mr Sesoko asked you to do so.
6. I am of the view that your conduct as explained above was a perpetuation of the dishonest act and the defeating of the ends of justice which you have already pleaded guilty to, and a serious breach of the leniency of the sanction that I gave you of a final written warning. I am inviting you to provide me with the full explanation as to why you deposed to an affidavit in respect of a disciplinary matter which had been concluded, and in which you sought to contradict the terms of your guilty plea, and the terms of the settlement agreement. I require your full explanation on this matter because it is of grave concern to me, in order to enable myself, to take an appropriate decision, on whether I should revoke the final written warning and replace it with a sanction of dismissal.
7. In the light of your conduct aforesaid, I invite you to make written representations to me by no later than 09h00 am on Wednesday, 30 September 2015, why it is not appropriate that a final written warning be revoked and a summary dismissal be imposed.

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Yours faithfully


MR K. KGAMANYANE
ACTING IPID EXECUTIVE DIRECTOR
DATE 25/09/2015

ACKNOWLEDGED BY _____ ON _____ 2015
AT _____



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ipid

**Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA**

Private Bag X9525, Polokwane, 0700, 65 A Market Street, Fennic Building, 2nd Floor, Polokwane
Tel.: (015) 291 9800 Fax: (015) 295 3409

Enq: IH Khuba
Date: 20150930

**Mr Israel Kgamanyane
Acting Executive Director
114 Madiba Street
Pretoria
0001**

Dear Mr Kgamanyane

SUBJECT: MY GUILTY PLEA AND SANCTION

I have noted your letter dated 29/09/2015 which was hand-delivered by Mr. Mnisi on the same day. The content of your letter relate to a settlement agreement which was concluded on 23/09/2015. On 2015/09/28 while I was in the office I received your telephonic call in which you asked me whether I made a statement on 25/09/2015. After I confirmed that I made a statement, you asked me why I made such statement. Reason was given to you which is contrary to what you have cited in your letter.

The reasons for deposing an affidavit was to clarify Mr Sesoko that the settlement agreement was between me and the employer and that it was never meant to implicate or exonerate him as a second respondent in the case I was initially charged with. Deposing of a statement against or in favour of an employee does not require the permission of an Accounting Officer and therefore cannot be held against me as misconduct.

The Plea Agreement which was concluded on 23/09/2015 was proposed to my lawyer by the employer's representative (Mr Mkhani) on 22/09/2015. Such agreement could not be concluded on 22/09/2015 because we informed the employer that we would like to apply our minds to the offer and consider the implication of such agreement. After we considered that the case has been dragging for a long time which is torturous to my family, we decided to accept the offer presented by the employer.

The agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko. Your paragraph four states that my conduct of deposing an affidavit after the settlement contradicted terms of the Guilty Plea. The Agreement does not have terms with regard to this issue. If the employer made an offer for a settlement agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first.

It is unfortunate that you learned about the existence of my affidavit from the media; however a trace of the email which I can also provide as proof shows that it was emailed to Mr. Sesoko's

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My guilty plea and sanction

HIKHUBA

lawyer on 25/09/2015. I do not know how it ended up with the media. It is as baffling to me as the same Plea Agreement which was quoted by Sunday Times of 27/09/2015 whereas the discussions took place behind closed doors.

Your paragraph 6 and 7 states that I should explain why you shouldn't revoke the final written warning and replace it with dismissal. The same Plea Agreement which was signed by the employer does not have clause that allow the imposition dismissal without a hearing on the so called new misconduct or any contravention if really there was such. This clearly shows that this agreement is used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced that the employer made such an offer in bad faith. It is clear that with this amount of victimisation, the so called six months in which the sanction would be active, is going to be a nightmare for me.

I have approached the PSA for an urgent High Court application to have the Agreement set aside based on number of reasons, to allow me to go through the process of a hearing.

If you decide to serve me with letter of dismissal, please use the same address that appears on your letter dated 29/09/2015. I have been booked off sick due to my ill-health and will only be back on 08/10/2015.

Kind Regards



HIKHUBA
PROVINCIAL HEAD - LIMPOPO

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Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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"E1"

Private Bag X941, Pretoria, 0001, City Forum Building, 114 Madiba Street, Pretoria
Tel: (012) 399 0026 Fax: (012) 399 0140
Email: ikgamanyane@ipid.gov.za Web: www.ipid.gov.za

Mr Innocent Khuba
Provincial Head: Limpopo Province
14 David Mabilo Street
Faranani Estate
Polokwane
0700

BY HAND

30 September 2015

Dear Mr Khuba

RE: YOUR DISMISSAL FROM EMPLOYMENT WITH IMMEDIATE EFFECT

1. On 29 September 2015, I addressed a letter to you affording you an opportunity to make written representations to me by no later than 09h00 on 30 September 2015, as to why the sanction imposed on you of a final written warning should not be altered to a summary dismissal in the light of your conduct on 25 September 2015, when you deposed to an affidavit without my knowledge and consent contradicting your plea of guilty and the terms of the settlement agreement you signed on 23 September 2015.
2. I have received your written representations at 08h45 on 30 September 2015, and I have taken them into account in making my decision herein. Nothing in your representations address the issues I have raised in my letter dated 29 September 2015, than a further confirmation of your perpetual dishonesty.
3. I find that your conduct on 25 September 2015 was the perpetuation of the dishonest conduct and defeating of the ends of justice which you had already pleaded guilty to. Due to the seriousness of this transgression and the seniority of the position you hold in IPID as the Provincial Head, I find that I am unable to trust you anymore, and as such, the trust relationship has been

Page 1 Of 2

Mr i Khuba / Your Dismissal From Employment With Immediate Effect

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irreparably broken down. The position that you occupy is one of trust and the person who occupies it must be a person with integrity. You have demonstrated through your dishonest conduct that you lack integrity and cannot be trusted by the employer.

4. I therefore dismiss you from your employment with immediate effect.
5. If you wish to challenge your dismissal, you are entitled to refer the dismissal dispute to the Bargaining Council within 30 days from the date of your dismissal.

Yours faithfully


MR K. KGAMANYANE
ACTING IPID EXECUTIVE DIRECTOR
20150930
cc. Employee Relations Officer

24



TELEPHONE RECORDING

COL MAHLANGU
AND
HUMBULANI INNOCENT KHUBA



LUBBE & MEINTJES cc

Box 1852 Ground Floor
SOUTHDALE Arbour Square
2135 BRAAMFONTEIN

Tel: (011) 339-8073

Fax: (011) 339-6766

ms H

TELEPHONE RECORDING

COL MAHLANGU
AND
HUMBULANI INNOCENT KHUBA



LUBBE & MEINTJES cc

Box 1852 Ground Floor
SOUTHDALE Arbour Square
2135 BRAAMFONTEIN

Tel: (011) 339-8073

Fax: (011) 339-6766

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TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

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BEGINING OF CD TRACK call_15 10 03 +27827782835

HUMBULANI INNOCENT KHUBA: Hello Mr Poko.

COL MAHLANGU: Yes, are you sleeping?

HUMBULANI INNOCENT KHUBA: No, I am not sleeping.

5 COL MAHLANGU: I am sure you are sleeping.

HUMBULANI INNOCENT KHUBA: No, who am I speaking to?

COL MAHLANGU: It is alright.

HUMBULANI INNOCENT KHUBA: Who am I speaking to, who am I speaking to, is it Mr Poko?

10 COL MAHLANGU: No, did you not save my phone numbers man?

HUMBULANI INNOCENT KHUBA: Who is it? I saved them, who am I speaking to?

COL MAHLANGU: If you had stored it you would have seen my name on your phone.

15 HUMBULANI INNOCENT KHUBA: Brigadier how are you?

COL MAHLANGU: I am okay man.

HUMBULANI INNOCENT KHUBA: I thought it was Mr Poko man.

COL MAHLANGU: Yes it is me; I wanted to check if you stayed well?

HUMBULANI INNOCENT KHUBA: No I am okay, how was the trip?

20 COL MAHLANGU: No I am not home yet but I am at the elder's house.

HUMBULANI INNOCENT KHUBA: Where, okay, okay.

COL MAHLANGU: In the rural areas here, I am home, no one stays here so I decided to come and open the windows so that some air can come in.

HUMBULANI INNOCENT KHUBA: Okay, that is good.

25 COL MAHLANGU: Yes.

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TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

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HUMBULANI INNOCENT KHUBA: No man, thanks, I will talk to Brigadier maybe tomorrow to finalise the appointment on Monday.

COL MAHLANGU: Yes, yes I forgot to show you something.

HUMBULANI INNOCENT KHUBA: Okay.

5 COL MAHLANGU: Yes, I forgot to show you something, just so that you know that everything you do for good for yourself.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: General, General, remember General is your friend.

HUMBULANI INNOCENT KHUBA: Yes.

10 COL MAHLANGU: Remember General Nhlemeza is your friend.

HUMBULANI INNOCENT KHUBA: Yes, no he is my friend.

COL MAHLANGU: You must understand that whatever you do well for yourself.

HUMBULANI INNOCENT KHUBA: Yes.

15 COL MAHLANGU: Not to support your enemies.

HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: We will make him, we will make him and we will empower him to ensure that you restore your job, that is what you must do.

HUMBULANI INNOCENT KHUBA: Okay.

20 COL MAHLANGU: That you must know, whatever, everything of good you do for yourself.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: And you are not in line with your enemy.

HUMBULANI INNOCENT KHUBA: Yes, yes, yes.

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TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

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COL MAHLANGU: As soon as everything is finalised General is the one who will do good for you.

HUMBULANI INNOCENT KHUBA: Okay, okay.

COL MAHLANGU: As a friend, as a person you know.

5 HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: I do not think he will dump you, I do not think he will throw you, he will throw you in the mud, the only thing you must do is be honest to yourself, fix everything, do not take wrong ideas and advices, and then we will tell General, NPA will deal with whoever they deal with, but we will inform General that since this guy has pushed for us to reach where we are.

HUMBULANI INNOCENT KHUBA: Yes.

COL MAHLANGU: As the witness.

HUMBULANI INNOCENT KHUBA: Yes, yes.

15 COL MAHLANGU: Then he is acquitted.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: And something has to be done, he has to be restored next to his position or to his (indistinct).

HUMBULANI INNOCENT KHUBA: Okay.

20 COL MAHLANGU: Yes, please you must underline it, you must put NB behind it and underline it, do not do it.

HUMBULANI INNOCENT KHUBA: Okay.

COL MAHLANGU: Do not highlight it with a highlighter, you must write it with a red pen underneath, it is the best statement to you, you must empower yourself.

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TELEPHONE RECORDING
COL MAHLANGU AND HUMBULANI INNOCENT KHUBA

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HUMBULANI INNOCENT KHUBA: Okay.

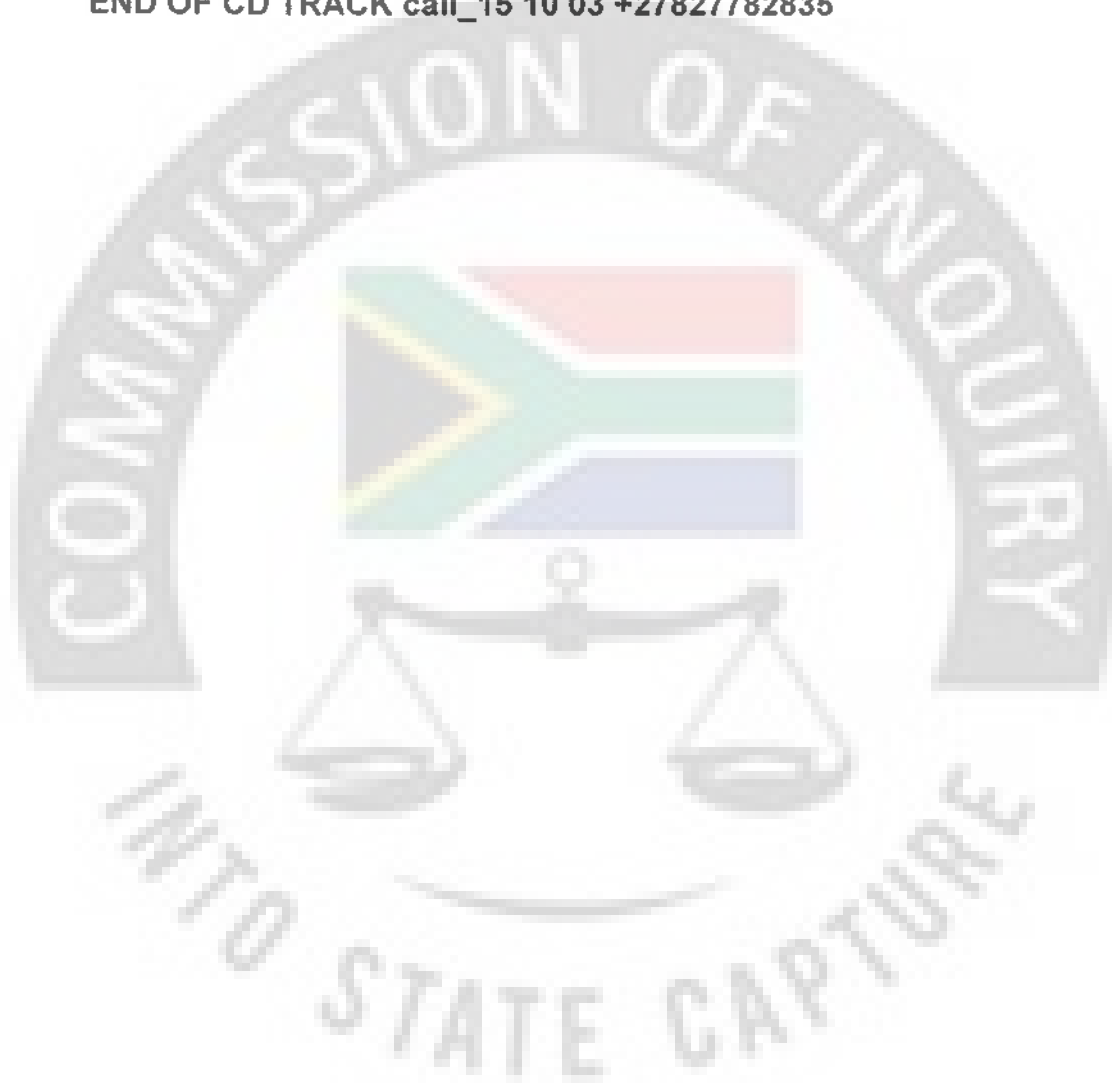
COL MAHLANGU: Yes, okay cool then.

HUMBULANI INNOCENT KHUBA: No problem, thanks.

COL MAHLANGU: Okay cool.

5 END OF PHONE CONVERSATION

END OF CD TRACK call_15 10 03 +27827782835



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CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that so far as it is audible to us, the foregoing is true and correct transcript of the proceedings recorded by means of a mechanical recorder in the matter of:

**TELEPHONE RECORDING: COL MAHLANGU AND HUMBULANI
INNOCENT KHUBA**

TRANSCRIBER : MAMIKI
DATE COMPLETED : 07 OCTOBER 2015
TRANSCRIBER : P.P. [Signature]

LUBBE & MEINTJES cc

Box 1852 Ground Floor
SOUTHDALE Arbour Square
2135 BRAAM FONTEIN
Tel: (011) 339-8073
Fax: (011) 339-6766

Handwritten marks: "m i s" and "HP" are visible below the contact information.

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**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

Case No. J2031/15

In the matter between:

HUMBULANI INNOCENT KHUBA

ARBEIDSHOF		
PRIVAATSAK/PRIVATE BAG X52 BRAAMFONTEIN 2017		
CT	2015 -10- 07	CT
86 JUTA STREET, ABSOUR SQUARE BLD BRAAMFONTEIN 2017		
LABOUR COURT		

Applicant

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the Applicant intends to make application to the above Honourable Court on 15 OCTOBER 2015 at 10:00 a.m. or so soon thereafter as the matter may be heard for an order in the following terms:

1. The applicant's non-compliance with the forms or service provided for in the Labour court is condoned and this matter is disposed of as urgent in terms of Rule 8.
2. Pending the outcome of an unfair labour practice dispute (which dispute is to be referred to the Public Service Co-Ordinating Bargaining Council within 5 days from date of this application) the first respondent is ordered to pay to the applicant his monthly remuneration each and every month.

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affidavit/s, if any, by no later than Monday the 12th October 2015 at 14H00 p.m.;

- (b) further that you are required to appoint in such notification to appoint an address at which you will accept notice and service of all documents in these proceedings.

failing which the matter will be heard in your absence.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

Signed and dated at Johannesburg on this the 7th day of October 2015



Applicant's Attorneys

Thabiso Maseko Attorneys

2nd Floor West Tower

Nelson Mandela Square

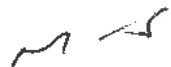
Maude Street, Sandton

Johannesburg

Tel: 011 881 5453

Fax: 011 881 5611

Ref: Thabang Mathibe



TO: THE REGISTRAR OF THE LABOUR COURT
6th and 7th Floors, ABA Square Building
86 Juta Street Cnr. Melle Street
Braamfontein, Johannesburg

And to: **Respondent**
Independent Police Investigative Directorate
Head Office
No. 114 Madiba Street
Pretoria

Per Fax: 012 399 0144

Per Email: msmit@ipid.gov.za

Acting Executive Director: I Kgamanyane

Email: IKgamanyane@ipid.gov.za



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**IN THE LABOUR COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN**

Case No. J2031/15

In the matter between:

HUMBULANI INNOCENT KHUBA

Applicant

and

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HUMBULANI INNOCENT KHUBA

do hereby make oath and say that:

1. I am the applicant, an adult male and was employed by the Independent Police Investigative Directorate in the capacity as Chief Director: Investigations, Limpopo Province.



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2. The facts deposed herein are, unless otherwise stated to the contrary, within my personal knowledge and to the best of my belief both true and correct.

The respondent

3. The first respondent is the Independent Police Investigative Directorate ("IPID"), an independent police complaints body established in terms of Section 3 of the Independent Police Investigative Directorate Act No. 1 of 2011, with its Head Office situated at No. 114 Madiba Street, Pretoria.

My case

4. The Acting Executive Director of IPID, Israel Kgamanyane ("Kgamanyane") unilaterally revoked a written settlement agreement in which, a sanction of a final written warning was contained, and summarily replaced the agreement with a summary dismissal.
5. The unilateral revocation of the settlement demonstrates the bad faith, high handedness and deliberate undermining of the principle of legality as there are no lawful grounds for the termination of my employment with IPID.

Material facts

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6. On 01 October 2014, I was promoted to the post of Chief Director: Investigations, Limpopo Province.
7. I was placed on suspension with pay on 21 May 2015 and on 6 July 2015 I was notified of a disciplinary hearing against me and my superior, Matthews Sesoko ("Sesoko") for dishonesty and defeating the ends of justice. A copy of the disciplinary notice is attached hereto marked Annexure "A".
8. My disciplinary hearing was settled on 23 September 2015 on the basis that IPID would impose a final written warning that was valid for 6 months and I would return to work on 28 September 2015. A copy of the settlement agreement is attached hereto marked Annexure "B".
9. On 25 September 2015, I provided Sesoko with a statement setting a brief background to the facts relevant to the charges against Sesoko, an undertaking that I did not implicate Sesoko in my settlement with IPID and that I am free to give evidence in support of Sesoko's case. A copy of my statement to Sesoko is attached hereto marked Annexure "C".
10. On 28 September 2015, I presented myself for work. At about 12:00 p.m. I received a telephone call from Kgamanyane who enquired on the statement that I provided to Sesoko.

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11. The next day a letter was hand-delivered to me by the IPID Head of Security. A copy of Kganyane's letter is attached hereto marked Annexure "D".
12. The letter stated, *inter alia*, that, "in breach of your guilty plea and the agreement for a lenient sanction short of dismissal as contained in the settlement agreement, and without my knowledge or consent deposed to an affidavit in Polokwane, which contradicted the terms of your guilty plea as contained in the settlement agreement."
13. I was invited to provide an explanation for deposing to the affidavit, which Kganyane believed to be a contradiction of the settlement.
14. I provided an explanation to Kganyane stating, *inter alia*, that, "the settlement agreement was between me and the employer and that I was never meant to implicate or exonerate him (Sesoko) as a second respondent in the case I was initially charged with. Deposing to a statement against or in favour of an employee does not require the permission of an Accounting Officer and therefore cannot be held against me as misconduct."

"...the agreement does not have any condition or terms which require me to depose or not depose statement regarding this matter or testify in favour or against Mr Sesoko... If the employer made an offer for settlement

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agreement with ulterior motive, unfortunately I failed to read such during the acceptance of the offer. I concluded the agreement in good faith and putting the interest of my family first."

"The same Plea Agreement which was signed by the employer does not have clauses that allow the imposition of dismissal without a hearing on the so called new misconduct or any contravention if there really was such. This clearly shows that this agreement was used as an instrument of victimisation by the employer. With this threat of dismissal, I am convinced the employer made such offer in bad faith."

15. A copy of my letter is attached hereto marked Annexure "E". I was summarily dismissed by Kgamanyane the same day. A copy of my dismissal letter is annexed hereto marked Annexure "E1".

My employment with the Independent Complaints Directorate ("ICD") and IPID

16. I commenced employment with the IPID, formerly Independent Complaints Directorate ("ICD") on 1 January 1999 as the Assistant Director Investigation for the Northern Cape Province. During February 2000, I was requested to supervise the investigations in the Free State Province. At the end of 2000, I was appointed as the Acting Head of the Northern Cape Province Provincial Office.

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17. During June 2001, I was appointed as the Provincial Head for Limpopo Province as a Deputy-Director. During 2003, I was also assigned the responsibility of managing the Mpumalanga Provincial office. On 1 July 2007, I was promoted to the level of Director.
18. During 2011, I was transferred to Kwa-Zulu Natal Province for a period of six months to assist the office with achieving the Departmental Strategic objectives. After completion of the six month period I reverted back to my post in Polokwane.
19. At the beginning of 2012 I was re-assigned back to Kwa-Zulu Natal Province to head the task team investigating the so-called Cato Manor police death squad. I was forced to leave this post after my life was threatened during an investigation into the Cato Manor police investigation. I returned to Polokwane as Provincial Head for Limpopo Province as a Director.
20. During 2012 I was appointed to investigate all complaints against Major General Shadrack Sibiya ("Sibiya") who was stationed with the Directorate for Priority Crime Investigations ("the Hawks").
21. On 1 April 2012, the ICD was transferred to IPID.
22. On 23 October 2012, I was appointed by Sesoko to investigate the illegal rendition of five Zimbabwean nationals.

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23. On 1 October 2014, I was appointed as the Provincial Head for Limpopo Province as a Chief Director. A copy of my appointment letter is attached hereto marked Annexure "F".

The Zimbabwe renditions

24. On 23 October 2012, Sesoko, the Acting Head of Investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals. The investigation was known to be a National Project as the renditions did not occur within the Limpopo Province. I was brought into the investigation as an "outsider" as the investigation was a high priority matter which required my final report to be approved by the IPID Executive Director.
25. I was instructed to assemble my own team to assist me in the investigation, which I did. The docket contained 13 statements from members of the Crime Intelligence Department, friends and relatives of those deported to Zimbabwe.
26. Ms. Koekie Mbeki ("Mbeki"), the then Acting Executive Director of IPID, instructed me to collaborate with a member of Crime Intelligence, Colonel

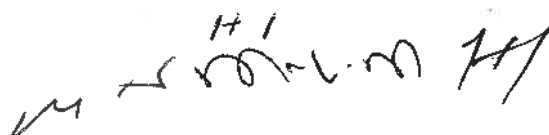
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Moukangwe ("*Moukangwe*") in the investigation. Mbeki also instructed me to keep Moukangwe's involvement in the matter secret.

27. I found Mbeki's instruction not in keeping with the Departmental practices and processes. The instruction was unusual and problematic because members of the Crime Intelligence were themselves involved in the arrest of the Zimbabwean Nationals. Nonetheless I complied with Mbeki's instructions.
28. Upon meeting with Moukangwe, he then in turn told me to work with two members from the National Prosecuting Authority ("*NPA*"), namely, Adv. Anthony Mosing ("*Mosing*") and Billy Moeletsi ("*Moeletsi*"). He advised the pair had been guiding the investigation since its inception.
29. I commenced the investigation by obtaining statements from officials from the Department of Home Affairs. I was accompanied by Moukangwe.
30. During the course of the investigation I met with General Dramat ("*Dramat*") of the Hawks together with Moukangwe. I requested the internal investigation file from the Hawks, which was provided to me.
31. I studied the contents of the Hawks docket and I became suspicious of the statement of a certain, Lieutenant Colonel Madilonga ("*Madilonga*") who was posted at the Beit Bridge Border Post.

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32. On 8 April 2013, I met with Madilonga, without Moukangwe, to clarify certain issues on his statement. During the interview Madilonga stated that Zimbabwean Police officials met him at the Border Post and showed him the cellphone number of Dramat. They said that they were meeting with Dramat in connection with Zimbabwean citizens in South Africa who were involved in the murder of a senior police officer.
33. Madilonga stated that he obtained permission from his superiors to call Dramat, who Madilonga alleged, confirmed that the Zimbabwean Police officials were meeting with him.
34. I then gathered documentary evidence on the Zimbabwean nationals and their deportation. At this stage of the investigation Mbeki gave me an instruction that I should not involve Sesoko in the investigation. Again, I found this instruction to be unusual as Sesoko was my immediate superior and I reported to him regularly on my other investigations.
35. I also interviewed members from Crime Intelligence from Pretoria Central with Moukangwe. These members provided important information on the arrest of two of the Zimbabwean nationals.
36. I then compiled a preliminary report which I forwarded to Moukangwe, Mosing and Moeletsi. During the months that followed, we met on several.

A handwritten signature in black ink, appearing to be 'H. I. Moeletsi', with a stylized flourish at the end.

occasions and they gave their input on the analysis of evidence contained in the report.

37. During or about August 2013, I sent the cellphone records of Sibiya, Dramat and others suspected in the renditions to a Cellphone Data Analysis Expert. Amongst these records were the cellphone records of a certain Lieutenant Colonel Maluleke ("Maluleke") who allegedly spearheaded the arrests of all the Zimbabwean nationals.
38. The Data Analysis expert sent me an incomplete report which did not contain details of locations of persons making or receiving calls. This was an important consideration as some witnesses had alleged that Sibiya was present at the scene at the time of the arrests.
39. I met with Mosing during this time and he was aware that the finalisation of the investigation was delayed by the Data Analysis expert and outstanding warning statements.
40. During October 2013, I drafted questions for a Warning Statement for Dramat. Dramat initially responded by providing a brief history of his political background without properly responding to the questions sent to him. I persisted in having these questions directly answered by Dramat who provided the answers during November 2013.

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41. During December 2013, I drafted questions for Sibiya but sent them first to Mosing for his input before sending them to Sibiya. After receiving the questions back from Mosing I then forwarded the questions to Sibiya. Upon receiving the questions Sibiya indicated that he intended to consult with his legal representative before providing answers. Also, Sibiya had met with Sesoko to express his anger at being served with the questions. Thus, Sesoko became a facilitator between Sibiya and I.
42. During December 2013, Mosing contacted me and stated that the investigation should be finalised. I requested him to be patient and wait for the outstanding Data Analysis report in the form that he required and for Sibiya's answers. I must state that the cellphone data analysis report that was in the docket did not give an indication of the location of the relevant persons making and receiving calls. However, Mosing was impatient and pressured me into submitting a report on the investigation.
43. During January 2014, I met with Mosing and delivered the investigation report to him. The report did not have the outstanding evidence with regard to the warning statement of Sibiya and the cellphone records providing the street location of the relevant individuals making and/or receiving calls. I was adamant that the report had to be approved by the IPID Head as it was a national investigation.

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44. On 26 February 2015, Sibiya responded to the questions previously sent to him. However a few days before receiving Sibiya's statement I also received the cellphone data analysis report from the expert in the manner and form required by Mosing. It was bulky and in manual form.
45. On 27 February 2015, I submitted Sibiya's response to Mosing by email. I could not simultaneously email the cellphone data analysis report as it was bulky. On 28 February 2015, Mosing informed me that he referred the investigation docket together with his own report to the Directorate of Public Prosecutions ("DPP") in Johannesburg. I attach a copy of Mosing's email as Annexure "G".
46. On 3 March 2015, Robert McBride ("McBride") commenced employment as the Executive Head of IPID.
47. I met with McBride on 4 March 2015. He requested an update on the Zimbabwe renditions, which I provided to him. I briefed McBride on my appointment, the persons who were assigned to assist me in the investigation and whom to exclude from the investigation.
48. McBride expressed his concerns with the lack of independence in the investigation, the methodology of the analysis of evidence and the exclusion of Sesoko from the investigation.

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49. On 5 March 2015, I met with Sesoko, Glen Angus ("Angus") and McBride. I informed them that the investigation docket was with Gauteng DPP in Johannesburg. I also informed them Mosing took the investigation docket without Sibiya's warning statement and the Data Analysis report in the form required by Mosing.
50. McBride then permitted Angus and I to fetch the investigation docket from the Gauteng DPP in Johannesburg in order to supplement the docket with the outstanding information. Sesoko was delegated to assist in the process.
51. On 6 March 2015, Angus accompanied me to Johannesburg to fetch the investigation docket from the Gauteng DPP offices in Johannesburg. I noticed that docket did not contain my report.
52. The Cellphone Data Analysis report exonerated Sibiya from being at the arrest locations. I then finalised the report with guidance from Sesoko. McBride then approved the report. Sesoko, McBride and I signed the report as the supervisor, Executive Head and compiler, respectively.
53. McBride then personally handed the investigation docket over to the NPA.
54. The final report recommended that Maluleke should be charged with kidnapping and defeating the ends of justice.

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55. The final report recommended that Sibiya should be exonerated based on the cellphone data analysis report which did not place him at the scene of the arrests as alleged by witnesses.
56. Upon an independent review of all available information there was no evidence that Dramat in fact had knowledge of the illegal renditions. This conclusion is based on the following among others:
- 56.1. There is no evidence that Dramat received the success reports. In any event the same success reports that claim that Dramat had a meeting with the Zimbabwean Police lacked detail about the meeting itself. There is no indication of what was discussed and who was part of that meeting.
- 56.2. The fact of a meeting with Zimbabwean Police takes the matter no further as Dramat does from time to time meet with Zimbabwean Police
57. It is on this basis amongst others that Dramat was exonerated in the report.

McBride's suspension and approaches from IPID

58. During March 2015, McBride was suspended from work and Kgamayane was appointed as Acting Executive Head of IPID.

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59. Soon thereafter IPID made approaches to me to explain the existence of two reports (my preliminary report and the final report). I was also called to three interviews at Werksmans Attorneys about the existence of the two reports. At the commencement of these interviews I was assured that the information gathered would not be used against me at a later stage. However, this was not the case as I was later suspended and charged with dishonesty and defeating the ends of justice.

60. I was suspended from work on 21 May 2015 and on 6 July 2015, I was charged with Sesoko.

The disciplinary hearing and my settlement of the charges

61. The disciplinary hearing against Sesoko and I was set down for 17 July 2015. However, this was postponed to 13 to 17 August 2015 for the commencement of the hearing. I could not attend as I was booked off-sick for depression and the hearing did not commence.

62. I understand however that Sesoko raised certain preliminary matters that required a response from the Employer. A preliminary hearing commenced only in respect of the issues raised by Sesoko.

63. On 23 September 2015, I was present for the hearing but Sesoko was not. Sesoko's legal representative advised the Chairperson that he had been

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booked to undergo a surgical procedure. The employer's representative then approached my attorney to propose a settlement of the charges on the basis that IPID would issue me with a final written warning that was valid for six months if I pleaded guilty to the charges.

64. I accepted IPID's offer and signed the settlement agreement. I also intended to avoid a costly and acrimonious hearing and to mend the relationship between IPID and myself.
65. On 25 September 2015, Sesoko called me to enquire on the details of the settlement agreement. I informed him of the agreement but he did not trust me and thought that I had falsely implicated him. In order to allay his fears I drafted an affidavit setting out the background of the relevant facts and I also stated that I did not implicate him in the settlement agreement and further that I was free to give evidence in support of his case at his upcoming disciplinary hearing.
66. I presented myself to work on 28 September 2015. At about 12:00 p.m. I received a call from Kgamanyane who stated that he was informed of my statement and wanted to know the details contained in the statement. There appeared to be no issue as Kgamanyane did not seem to be upset by the statement.

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67. On 29 September 2015, I received a letter from Kgamanyane asking me to set out why I should not be dismissed for giving Sesoko a statement.
68. On 30 September 2015, I responded to Kgamanyane's letter. However, I was dismissed by that afternoon.

Advances from the Hawks

69. On 2 October 2015, I received a telephone call from a certain Brigadier Rammela ("Rammela") from the Hawks. He asked to meet with me at the provincial office of the hawks in Polokwane. I advised him to come over to my home in Polokwane.
70. Rammela came over within the hour together with another employee from the Hawks by the name Colonel Mahlangu ("Mahlangu"). He asked me to draft a statement in which I referred to my January and March reports. He also wanted me to state that McBride had pressured me to change my report in order to exonerate Sibiya and Dramat. At this point, I asked to speak to my lawyer and Rammela responded by stating that he could arrange for me to be reinstated at IPID. I again stated that I would need to consult with my attorney.

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71. The next day, 3 October 2015, Rammela came over to my home again. He brought a docket which he claimed contained a charge of perjury against me with case number 2454/05/2015 opened at Pretoria Central. He told me that I would be arrested if I do not co-operate and give a statement against McBride and Sesoko. I refused to do so and told him to arrest me. He told me to think over my decision and that he would meet with me and my attorney on Monday, 5 October 2015 at my home at 15:00 p.m.
72. Later that day, I received a telephone call from Mahlangu which I recorded on my cellphone. I have made a transcript and a translation of the conversation. A copy of the transcript and the translation is attached hereto. Once again, Mahlangu encouraged me to draft the statement and to assure me that the General, whom he mentioned as General Ntlemeza, the National Head of the Hawks would reinstate me. A copy of the transcript of the conversation is attached hereto marked Annexure "H".

IPID's unlawful conduct

73. My case is based on IPID's unilateral revocation of the settlement agreement.
74. Section 77(3) of the BCEA states:

"(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of

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75. The material terms of the settlement agreement are that:

72.2 IPID would impose a sanction of a final written warning which is valid for six months;

72.4 There were no other terms and conditions to the settlement agreement and no party would have claims for any undertakings or representations not contained in the agreement.

76. The settlement agreement contains no condition that I would not be able to assist Sesoko in his disciplinary enquiry or to make a statement to Sesoko.

77. Further, my statement to Sesoko contains a summary of the background facts that I have set out above. There is nothing improper in the statement and I have not set out any falsities or lies in the statement.

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78. There is no reason to revisit the sanction that was agreed upon between IPID and I. The initial sanction was what we agreed upon and one which I accepted. IPID unilaterally revisited the sanction on the basis of a truthful statement and unilaterally imposed another sanction of dismissal in breach of the settlement agreement.
79. The opportunity afforded to me to make a representation does not accord with the principle of fairness as the charge against me contained in Kganyane's letter was not decided by an independent trier of fact in a hearing and there was also no opportunity to mitigate on the sanction.
80. I submit that the visits by members of the Hawks have revealed that my employer's biggest problem is that I do not want to give a statement implicating McBride and Sesoko.

Bad faith, high handedness and deliberate undermining of the principle of legality

81. I submit that the conduct of my employer is high handed and a complete disregard for the law of our country.
82. In the least, the agreement reached between myself and IPID created a reasonable and legitimate expectation that I would not face any disciplinary

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action on the same charges. Instead, I have been subjected to two differing sanctions for the same offences.

83. In any event and I submit that I am entitled to fair labour practices. IPID has ignored and flouted the provisions of Section 23 of the Bill of Rights of our Constitution and provisions of the LRA in summarily terminating me. This, regrettably from an oversight complaints body which appears to have the same tendency as organs of State to behave as if they are above the law.

84. My cause of action is premised on my right to fair labour practices and that I cannot be dismissed unfairly.

85. There are no lawful grounds for the termination of my employment and I submit that the termination of my employment is as a result of the truthful statement made to Sesoko.

Urgency

86. I was dismissed on 30 September 2015. Thereafter I sought legal advice from my current attorney and during this time the Hawks had approached me. I also had to consult with Counsel in Johannesburg, who settled this application. I submit that I have set out the time period and the circumstances which render this application to be urgent.

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87. I submit that this application is urgent because it also deals with abuse of power by IPID to falsely implicate McBride and Sesoko which is using State resources to pursue their own interest.

88. I submit that it is imperative that the court comes to my rescue in my interest and the interests of the public. I have no other recourse other than to turn to this court to prevent continued illegal conduct.

89. Wherefore, I pray that the court grants the relief sought in the notice of motion to which my affidavit is attached.


DEPONENT

THUS DONE AND SIGNED BEFORE ME AT BEAUM THIS 07 DAY OF OCTOBER 2015, AFTER THE DEPONENT DECLARED THAT HE/SHE IS FAMILIAR WITH THE CONTENTS OF THIS AFFIDAVIT AND REGARDS THE PRESCRIBED OATH AS BINDING ON HIS/HER CONSCIENCE AND HAS NO OBJECTION AGAINST TAKING THE SAID PRESCRIBED OATH. THERE HAS BEEN COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATIONS CONTAINED IN GOVERNMENT GAZETTE R1258 DATED 21 JULY 1972 (AS AMENDED).


COMMISSIONER OF OATHS

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FULL NAME:

Moruthane Lekoko Mateme

ADDRESS:

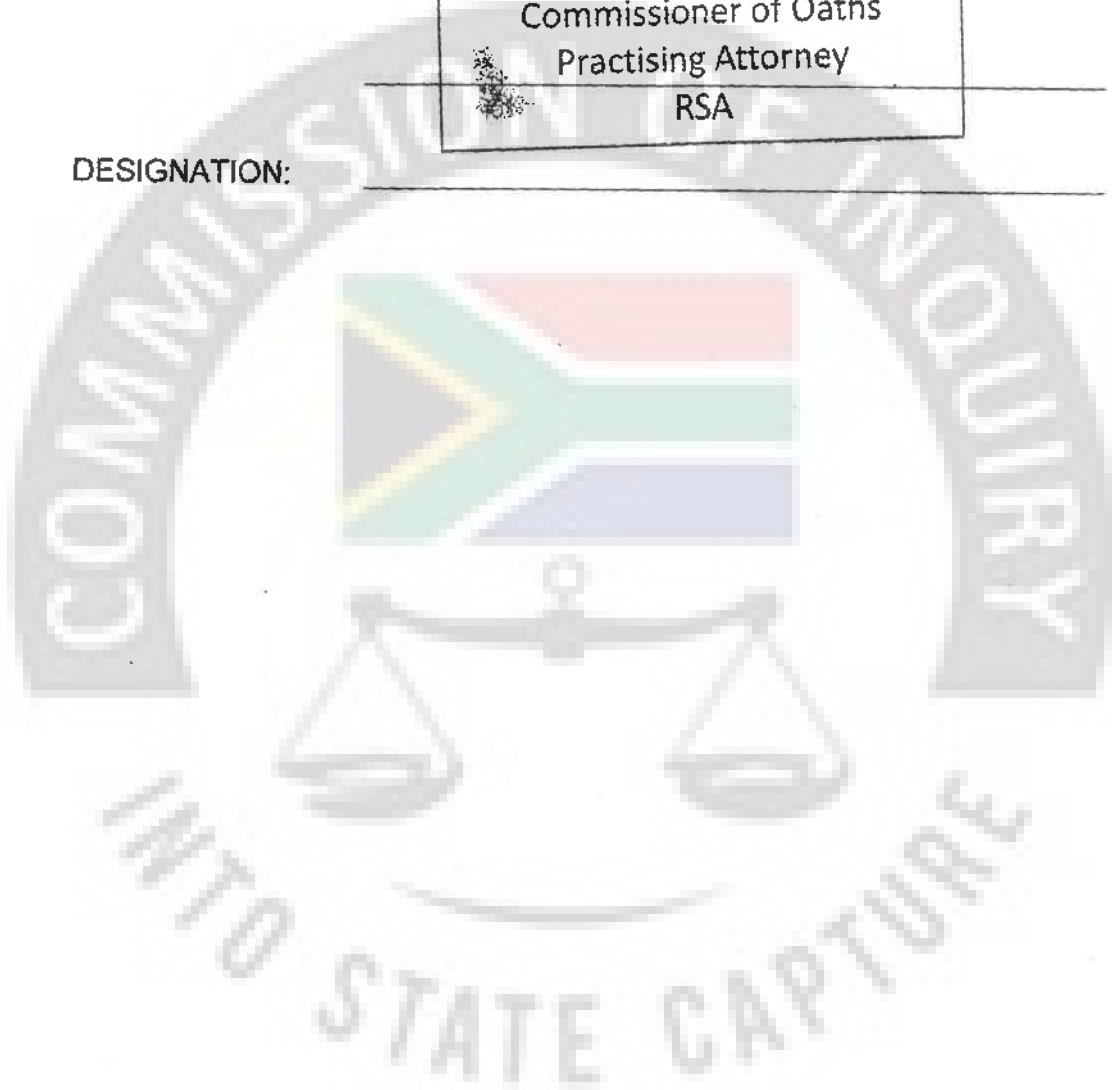
46 Victoria Avenue

Commissioner of Oaths

Practising Attorney

RSA

DESIGNATION:

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ANNEXURE "A"**Case no: A16/212 /2016**

THE STATE VERSUS

1. HUMBULANI INNOCENT KHUBA
2. MATTHEWS SESOKO
3. ROBERT McBRIDE

(Hereinafter referred to as accused 1 – 3 respectively)

Count No. 1**FRAUD**

Whereas Accused 1 had received instructions from the former Acting Executive Director of the Independent Police Investigative Directorate (IPID) around October 2012 to conduct an investigation into the rendition of Zimbabwean nationals by members of the Directorate for Priority Crimes Investigations (DPCI) to Zimbabwe;

AND

Whereas Accused 1 had conducted an in-depth investigation into the said rendition of Zimbabwean nationals by members of the DPCI with the assistance and or co-operation of other institutions such as the National Prosecution Authority (NPA), who were providing guidance to the investigation;

AND

Whereas Accused 1 having finalised the said investigation into the illegal rendition of the Zimbabwean nationals, compiled a report (herein referred to as the First Report) and submitted it to the National Prosecution Authority (NPA) on 22 January 2014. The First Report recommended to the National Prosecution Authority in accordance with Regulation 5(1) issued under the IPID Act 1 of 2011 that:-

- Lt General Dramat
- Major General Sibiya
- Lt Colonel Maluleke
- Constable Radebe
- Captain Nkosi and
- Warrant Officer Makoe

be charged criminally for the following offences:-

- Kidnapping and
- Defeating the ends of Justice;

There was a further recommendation that Lt Colonel Maluleke, Warrant Officer Makoe, Captain Nkosi and Constable Radebe be charged for assault and theft;

AND

Whereas Accused 3 subsequent to his appointment as Executive Director of the IPID on 3 March 2014 requested an update on all high profile matters handled by the IPID including the rendition matter, Accused 1 and a witness were directed and or instructed by Accused 3 to retrieve the rendition docket from the South Gauteng NPA office on 7 March 2014,

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Therefore the accused are guilty of the crime of fraud

IN THAT on or about the 5th day of March 2014 to 8 April 2014 and at or near IPID National Head Office, in Pretoria in the Regional Division of Gauteng, the Accused, unlawfully altered the First Report by amongst others:-

- removing information linking Lt General Dramat and Major General Sibiya from Pages 9, 16, 20, 21, 28 and 30 of the First Report;
- adding certain new paragraphs on Pages 23, 24, 25, 26, 29 and 30;
- changing the recommendation from the one mentioned above to recommending that "no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them".

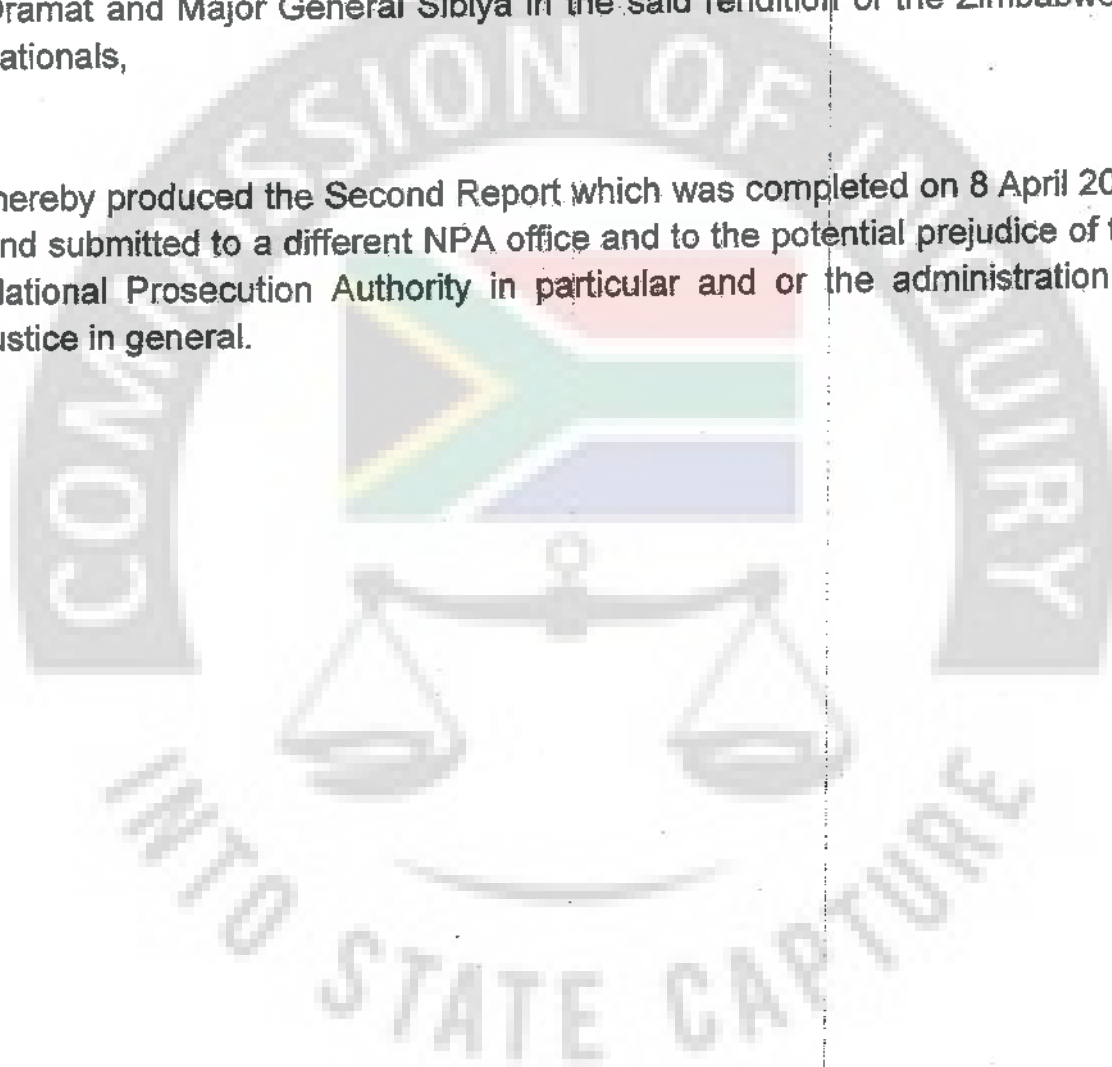
AND

- continued to make assertions and averments in other judicial processes that Lt General Dramat and Major General Sibiya were exonerated from any liability in the rendition of Zimbabwean nationals' matter,

Whereas Accused 3 knew when he made the assertions and averments in other judicial processes that he had no legal authority to exonerate anybody from any liability,

with the intention to falsely present to the National Prosecution Authority that the said Lt General Dramat and Major General Sibiya are not implicated in the rendition of the Zimbabwean nationals when in fact the accused knew when they made such false representations that there was evidence in the docket and the First Report, which implicated Lt General Dramat and Major General Sibiya in the said rendition of the Zimbabwean nationals,

thereby produced the Second Report which was completed on 8 April 2014 and submitted to a different NPA office and to the potential prejudice of the National Prosecution Authority in particular and or the administration of justice in general.



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ANNEXURE "B"**Case no: A16/212 /2016****THE STATE VERSUS**

- 1. HUMBULANI INNOCENT KHUBA**
- 2. MATTHEWS SESOKO**
- 3. ROBERT McBRIDE**

(Hereinafter referred to as accused 1 – 3 respectively)

COUNT 2**DEFEATING OR OBSTRUCTING THE ADMINISTRATION OF JUSTICE**

THAT the accused are guilty of the crime of Defeating or Obstructing the administration of justice

IN THAT upon or about the date and place mentioned in Count 1 within the Regional Division of Gauteng the accused did unlawfully and with intention to obstruct or defeat the administration of justice commit the following act to wit,

- removed information linking Lt General Dramat and Major General Sibiya from Pages 9, 16, 20, 21, 28 and 30 of the First Report;
- added certain new paragraphs on Pages 23, 24, 25, 26, 29 and 30;

- changed the recommendation from the one mentioned above to recommending that "no charges should be brought against Lt General Dramat and Major General Sibiya. The investigation established that there is no prima facie case against them".

AND

- continued to make assertions and averments in other judicial processes that Lt General Dramat and Major General Sibiya were exonerated from any liability in the rendition of Zimbabwean nationals' matter,

Whereas Accused 3 knew when he made the assertions and averments in other judicial processes that he had no legal authority to exonerate anybody from any liability,

which conduct defeated or obstructed the administration of justice.

PRETORIA DISTRICT COURT NO 16

FIRST APPEARANCE

DATE: 16/03/2016 CASE NO: A 16/212/16PRESIDING OFFICER: Ms M NaidooPUBLIC PROSECUTOR: Adv GS MaemaINTERPRETER: Mrs M MhlabaneDEFENCE: Mr SS Madiba obo Acc 1Mr T Mathibe obo Acc 2Mr A Venter obo Acc 3 (Adams Adams Attorneys)

1. Nature of charge(s) explained and understood.
2. Minimum sentence of _____ years explained and understood.
3. Rights in respect of bail explained and understood.
4. Rights in respect of legal representation explained and understood.

Accused elects to:

- Conduct own defence
- Instruct own legal representative
- Apply for legal aid

Proceeding mechanically cross all accused here* Attorney A advocate can final appearance
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as well as bail conditionsNot a schedule 6/5.All parties agree sum of R 1,500 - 00
Amount lodged in respective banks
before 18/3/16. Answer 8All parties 15/4/16 for disclosure
copies of charge sheetW/A cancelled.Ms Mhlabane: can final bail conditions served
at Madiba
Mr Venter
Atty can final
can final agreeRemains current + pendingAcc 2 no p/c no pending casesAcc 1 no p/c no pending casesAcc 3: no p/c cases nor pendingall charactersall understood 5/6/11/13in 1/1/

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CRIMINAL PROCEEDINGS

In the matter between

THE STATE

And

HUMBULANI INNOCENT KHUBA

DEFEATING THE ENDS OF JUSTICE AND FRAUD: PRETORIA CENTRAL CAS 2454/05/2015

1. On Wednesday of 24/02/2016 at 18h45 I was at home when three males arrived and introduced themselves as members of the DPCI based in Pretoria. They introduced themselves as Brigadier N Xaba, Lt Col H W Maluleke and Captain Sewele. Brigadier N Xaba who was the main speaker of the group; informed me that the purpose of their visit was to obtain a warning statement in connection with a case of defeating the ends of justice and fraud opened against me. According to him, these charges arise from the two recommendation reports made in rendition case which I understood to be Diepsloot Cas 390/07/2012. I was provided with the case number for defeating the ends of justice and fraud case which is Pretoria Central Cas 2454/05/2015.

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- 2 I remembered that it was the same case which Brigadier Rammela and Col Mahlangu of the DPCI showed me on 3 October 2015 when they requested me to make a witness statement implicating Mr McBride and Mr Sesoko in order to be reinstated after my dismissal without a hearing on the same matter. The same case had a charge of perjury and was cited in my founding affidavit to the Labour Court (Case No J2031/15), page 18 and paragraph 71. This is confirmed by telephonic call made to me by Col Mahlangu which was recorded and transcribed in which he encouraged me to make a statement against above mentioned individuals in order to be reinstated.
- 3 Brigadier Xaba gave me two pages document with 25 questions which he requested that i should respond to in my warning statement. The last question (question 25) requires me to give additional information in justification of my action. I hereby start with question 25 which provide with an opportunity to give background and challenges encountered during the investigation of Diepsloot Cas 390/07/2012.

4. Background

- 4.1 On 23 October 2012, Sesoko, the Acting Head of Investigations, handed a letter of appointment and a docket to me to investigate the illegal renditions of five Zimbabwean nationals. The letter was from the acting Executive Director Ms K Mbeki. However the investigation of Rendition case against the DPCI was requested by Minister Mthethwa in 2011 and shortly after the request, the Police Secretary, Ms Jenny Iris-Qhobosheane gave instruction to the then Executive Director Mr Beukman (in a meeting which I also attended) to hold-off the investigation until further communication from the Minister. At that time I was informed that I would be a lead investigator hence the request that I be part of the meeting between Ms Qhobosheane and the former Executive Director Mr Beukman.

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- 4.2 Mr Sesoko informed me that the reason for my appointment was that General Sibiya complained about the conduct of the North West Task team which was initially assembled to investigate cases of alleged assault against him, including Diepsloot Cas 390/07/2012. At that time I was dealing with high profile cases in the department which included Cator Manor "DEATH SQUAD" in Durban.
- 4.3 I was instructed to assemble my own team to assist me in the investigation, which I did. The team was comprised of the following individuals, Mr Kenneth Ratshitali, Mr L Maphetho, Mr N Mulaudzi and Mr. T Mashaphu who are all investigators from Limpopo IPID office. The docket contained 13 statements from members of the Crime Intelligence Department, friends and relatives of those deported to Zimbabwe. It was clear from the commissioned statements that the investigation was conducted by Col Maukangwe and Captain Koza of Crime Intelligence (CIG).
5. Challenges in the investigation of Diepsloot Cas 390/12/2012
- 5.1 When I began with my investigations, Ms. Koekie Mbeki , the then Acting Executive Director of IPID, instructed me to collaborate with a member of Crime Intelligence, Colonel Moukangwe ("Moukangwe") in the investigation. Ms Mbeki also instructed me to keep Moukangwe involvement in the matter secret.
- 5.2 I found Ms Mbeki's instruction not in keeping with the Departmental practices and processes. The instruction was unusual and problematic because members of the Crime Intelligence were themselves involved in the arrest of the Zimbabwean Nationals. Nonetheless I complied with Ms Mbeki's instructions.
- 5.3 Upon meeting with Moukangwe, he told me to work with two members from the National Prosecuting Authority ("NPA"), namely, Adv. Anthony Mosing ("Mosing") and Billy Moeletsi ("Moeletsi"). He advised that the pair had been guiding the investigation since its inception.

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- 5.4 Shortly after I began my investigation; I briefed Mbeki on the case and informed her that I would consult with Mr Sesoko in the course of investigation. This was common practice. As the National Head of Investigations at IPID, Sesoko was consulted and briefed on all national investigations. To my surprise Ms Mbeki categorically instructed me not to work with or discuss the case with Mr Sesoko. She stated that the person I could collaborate with was Mr Moukangwe of CIG. This was the first and the last time I received instruction to exclude the National Head of investigation on national project investigation in my almost 16 years of service with the department.
- 5.5 I then complied with the instruction of the Acting Executive Director and informed Mr Sesoko about it. I investigated the case, sometimes accompanied by Mr Moukangwe. However every time I gathered crucial evidence in his absence, I would telephonically informed him of the type of evidence obtained. He would always request me to fax or email him a copy. I enquired from the acting Executive Director whether I should share the copies of the docket with him. She informed me that he is a member of the investigation team and has a right to the content of the docket. She reiterated that the only thing required of me was to keep his involvement secret.
- 5.6 My worst fear about the arrangement was confirmed when Sunday Times started to publish certain evidence as they appears in the docket. Mr Moukangwe always wanted me to send copies of the documentary evidence and witness statements to an email which is june16@gmail.com even though I had his private email which is botsotsomoukangwe@gmail.com. He preferred that I email from Southern Sun hotel on Church Street in Pretoria rather than using the Department's email. The Sunday Times of 13 October 2013 had just published the details of Madilonga's statement and how it implicated Dramat. I was very concerned about the safety of Madilonga whom I regarded as key witness. I phoned Adv. Mosing the same Sunday and he also expressed his disappointment. I then requested Ms Mbeki in a letter

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dated 31/10/2013 that everybody involved in the investigation especially my team be polygraphed. The acting Executive Director told me that she would look into my request but nothing was done. Adv. Mosing expressed his interest in undergoing polygraph test with the rest of the investigative team. However, Col Moukangwe asked why I was worried about leaking of information whereas the Minister and my boss were not. He said they would never ask me about it, and really did not.

5.7 On the other hand, General Nhlemeza, the then Deputy Provincial Commissioner in Limpopo requested a meeting with me few months after obtaining Lt Col Madilonga's statement in 2013, I met with General Nhlemeza. We met at Wimpy, Cycad Centre in Polokwane. He said he had valuable information that could assist me in the investigation of rendition case. General Nhlemeza and I were close from working relation between IPID and SAPS in the province.

5.8 The General was with an officer from Eastern Cape claiming that when he attended a course in Cape-Town, Lt Col Maluleke confessed to him that he arrested Moyo in Zimbabwe by posing as a South African doctor who wanted to treat Moyo in South Africa. I interviewed him in the presence of General Nhlemeza and took notes by writing on my phone notepad. Advocate Mosing also took interest in the case regarding Moyo when I informed him of what General Nhlemeza has brought through Eastern Cape officer and also what was in Maluleke's laptop. He did his own investigation and emailed me a statement which was about the arrest of Moyo, which he indicated that he got it from the person who prosecuted Moyo. He also instructed me to obtain Moyo's statement from prison and check his hospital record at Musina hospital of which I did. However I could not confirm the allegation that Lt Col Maluleke posed as a doctor or he was in Zimbabwe when Moyo was arrested. Moyo story was not part of the March 2014 report but part of January 2014 report. This is also part of why I am being charged for not including it in March 2014 report despite its irrelevance to the case.

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- 5.9 During the meeting, General Nhlemeza informed me that he had transferred Lt Col Madilonga to Burgersfort and if I need him for anything I should contact him. I informed him that I am worried about Col Madilonga safety since he is a key witness. He assured me that Madilonga is his man and he is taking care of him. He then requested my wife's number as he suspected that my own number might have been intercepted. As a result, I started to have concerns about the credibility of Madilonga's statement. The main red flag was a recordal in Madilonga's second statement, which suggests that he had been put under pressure to give manufactured evidence in November 2011. I then took his statement for analysis by expert as confirmed by email dated 04/10/2013. The expert confirmed my suspicion.
- 5.10 In September 2013, General Nhlemeza called me using my wife's number and requested me to come to his house. When I arrived he asked me about the progress in the case. I informed him that there are still outstanding statements including the warnings statements of the suspects which I would be able to obtain before the end of the month. He told me that he regret to inform me that his political principals want him to head the hawks and not IPID. I said to him that I am disappointed because I was expecting him to join us as he earlier said. He promises to keep contact and assist in any investigation that I would be tasked to do.
- 5.11 Again in October 2013, my wife called me while I was watching TV and informed me that "Mhlekaazi" (referring to General Nhlemeza) was at the gate. She then handed me her phone and he requested me to order the security to open for him as he had valuable information to tell me. When he was inside, he said that he has urgent information to tell. He said on Friday he was at the Airport and he met with Mdluli who requested him to tell me that I must not be afraid when dealing with rendition case because there were people who were looking after me. He said he was asked by Mdluli to deploy people for my safety and that if I see any suspicious car behind me I should call him. I was surprised because I never met or spoke with Mdluli. During my entire investigation with Col Moukangwe, he never mentioned

Mdiuli's name. However, I did not enquire anything on what he said but told General Nhlemeza that if I see anything suspicious, I would call him. General Nhlemeza asked, when would I submit my report to NPA. I informed him that even though I had requested warning statement from Dramat, I was battling to get hold of General Lebeya who signed one of the success reports. He then called someone immediately who gave him General Lebeya's number. He said my report was the one holding everything regarding his move to the Hawks. I then called General Lebeya in his presence and put him on an open speaker. I requested him to provide me with a statement regarding rendition and he said I should come to his office in Pretoria. After refreshments, General Nhlemeza left. What General Nhlemeza said got me worried. I spoke to my wife saying that by accepting the request to investigate rendition case, I do not know what I got myself into.

5.12 The article of 13 October 2013 coupled with what General Nhlemeza said gave me a final thought to request the acting Executive Director to remove me from rendition investigation. I did not tell her about what General Nhlemeza said but I only told her that I was not happy with the leaking of information. She said I had to continue with the investigation of the case because there was no one who could do it and that the Minister would not be happy with that.

5.13 I only informed one of IPID employees whom I trusted about what happened when General Nhlemeza visited me. When I sent a report to Adv. Mosing, General Nhlemeza stopped asking me about the report. The last time I met with General Nhlemeza was on 06/12/2014 at Wimpy Cycad Centre. He had just called me to tell me the good news. I arrived at approximately 15h00 with my wife but she remained in the car. I found him seated inside. He said that his time to move to the Hawks had arrived and that there was going to be a hit on Dramat. He encouraged me to watch the news on TV in the next coming weeks. What he told me happened exactly as he said. His last communication with my wife was 31/01/2015 where he sent her a message at 16h06.

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- 5.14 During January 2014, I met with Mosing and delivered the investigation report to him. The report did not have the outstanding evidence with regard to the warning statement of Sibiya and the cell phone records providing the street location of the relevant individuals making and/or receiving calls. Adv. Mosing, Moeletsi and Moukangwe had previous met on several occasions with me and they gave their input on the analysis of evidence contained in the report. I was adamant that the report had to be approved by the IPID Head as it was a national investigation. At that time the acting Executive Director was no longer coming to the office. When I enquired from Tshiamo Mahibila, the Secretary to the Acting Executive Director, she said that Ms Mbeki only signs financial documents of the IPID and not investigation related matters. Advocate Mosing told me that nevertheless I should sign the report and send it to him. There are numerous emails exchanged between me and Adv. Mosing on this issue including the one where I requested him to give me time.
- 5.15 I must state that the cell phone data analysis report that was in the docket did not give an indication of the location of the relevant persons making or receiving calls. However, Mosing was impatient and pressured me into submitting a report on the investigation even though he earlier requested me to instruct the Expert to cover such points.
- 5.16 February 2014, Sibiya responded to the questions previously sent to him. However few days before receiving Sibiya's statement, I also received the cell phone data analysis report from the expert in the manner and form required by Mosing.
- 5.17 On 27 February 2015, I submitted Sibiya's response to Mosing by email. On 28 February 2015, Mosing responded via email as follows, *"Dear Mr Khuba, in light of the fact that the matter has been referred to the DPP of South Gauteng for decision, you are requested to file these evidence in the docket which is presently with the DPP SG and in future forward any additional evidence or other matter directly with him. Kind Regards."*

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5.18 On 3 March 2015, Robert McBride ("McBride") commenced employment as the Executive Head of IPID.

6. The Hawks members have been in my house four times now regarding the same case. I shiver to the core of my spine with fear because I just realised that I investigated a case which was so politically charged to an extent that certain outcome were needed. I was fired without a hearing and even that seems not to be enough. These charges of defeating the ends of justice and fraud are as baffling as my departmental case itself. It is my first time to hear that a recommendation which is just the view of the investigator about the case can give birth to a criminal charge.

6.1 In 2013 I was given appointment letter to investigate Boksburg CAS 322/04/2011, 21/04/2011 and 486/03/2011 involving General Sibiya. The case was already investigated by Mr De Jager, an assistant Director in Gauteng office. He had made recommendation report in which he recommended that General Sibiya should not be charged criminally. I review the already signed report and gathered additional evidence. On 13 November 2013 I made a report in which I recommended that General Sibiya be criminally charged. However, the DPP Gauteng informed me that despite my recommendation they are still of the view that there is no enough evidence to sustain a prima facie case. The question is where did they get the view that there is no evidence because my report clearly recommended criminal charges against him? It is clear that NPA is not bound by the view of the investigator on any case but guided by the evidence in the docket. They decided not to prosecute him in this case even though I recommended prosecution.

6.2 Mr Beukman tasked me to investigate a case of *Mzilikazi wa Afrika* in August 2011 wherein he was arrested in Gauteng by the Hawks and transported to Nelspruit for detention. The case was reported by a Member of Parliament and already investigated by Poopedi who was a Monitor in Gauteng office. He submitted a report in which he recommended disciplinary steps against members of the Hawks. The report was approved by Adv. Moleshe who was

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the Provincial Head at the time. I reviewed his report and gathered additional evidence and consulted Criminal Procedure Act as well as SAPS Standing orders. On 06 September 2011 I gave a report with a recommendation that no member of the Hawks be criminally or departmentally charged. The findings in my report were then communicated to the Member of Parliament concerned. No one brought criminal or departmental charges against me on these cases.

7. Every time when I think of what I got myself into by accepting the task, it gives me nightmares. I fear for my personal safety because members of the Hawks had already made advances, asking me to make a statement that implicates McBride and Sesoko in order to be re-instated into my position. It seems as I am viewed as the only gate to deal with McBride and it kills me with fear. Who knows what is next with me, I am really afraid. These are the most powerful people in the country and it seems as my life is at their mercy. I spend sleepless nights thinking of the worst. I just pray that all ends in opening cases against me without any physical harm. I will be able to defend myself in court. All the evidence that I have regarding what happened during the investigation, I am ready to produce in court.
8. When I concluded an agreement with the employer on 23/09/2015, it was because I feared the worst and took my family interest at heart. I grew without a father and took myself to the University sleeping under bridges in order to attend evening classes. I never wanted my children to go through what I went through. It is clear that sometimes no matter how hard one try to choose a path, some paths chooses us.
9. I would like to respond to the remaining 24 questions as follows;

9.1 Question 1:

See 4.1 above.

9.2 Question 2:

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See 4.2 and 5.1 above.

9.3 Question 3

See 5.3 above.

9.4 Question 4

See 5.1 above.

9.5 Question 5:

The investigation was not finished but nevertheless Advocate Mosing wanted the report and the docket. See 5.14 above.

9.6 Question 6:

Yes

9.7 Question 7:

Handed to Adv. Mosing.

9.8 Question 8

Advocate Mosing and Billy Moeletsi

9.9 Question 9:

I recommended criminal charges against General Sibiya, General Dramat, Lt Col Maluleke, Captain Nkosi, Warrant Officer Makoe and Constable Radebe.

9.10 Question 10:

Yes.

9.11 Question 11.

New evidence, Mosing email and McBride gave me permission to go to DPP.

9.12 Question 12

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Attach new evidence, update the docket and to do final report in terms of IPID regulations and IPID SOP.

9.13 Question 13

Attached new evidence in Sesoko's office and compiled final report.

9.14 Question 14

New evidence and review of existing evidence.

9.15 Question 15

It was with Mosing because I personally handed to him. And when I collected the docket, there was no report.

9.16 Question 16

Mr Sesoko

9.17 Question 17

New evidence and review of existing evidence.

9.18 Question 18

I was reminded that according to the IPID Act the Directorate makes recommendation to NPA and not with NPA.

9.19 Question 19

Yes

9.20 Question 20

I signed as an Investigator, Mr Sesoko as Supervisor and Head of Investigation and McBride as an approving authority.

9.21 Question 21

I handed it to Mr Sesoko whom I believed that he gave it to Mr McBride.

Handwritten signatures and initials:
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9.22 Question 22

No

9.23 Question 23

We arrived at different recommendation after new evidence and review of existing evidence.

9.24 Question 24

Yes

COMPILED AND SIGNED AT POLOKWANE ON THE 3RD DAY OF MARCH 2016



Innocent Humbulani Khuba

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**IN THE DISCIPLINARY HEARING
(HELD AT PRETORIA)**

In the matter between:

IPID

Employer

and

MATTHEWS SESOKO

Employee

WRITTEN REASONS FOR THE RULING

INTRODUCTION

1. These are written reasons in respect of a ruling which I handed down *ex tempore* on 16 August 2016, whereupon I found Mr Matthews Sesoko ("Sesoko") guilty of misconduct and thereafter issued a sanction of dismissal with immediate effect. Despite the fact that I gave an *ex tempore* ruling with oral reasons for my findings both in respect of misconduct and the sanction, I have however deemed it prudent to give written reasons if only to supplement my *ex tempore* findings and also for the benefit of any forum to which Sesoko may want to challenge my rulings.
2. The background to the misconduct charge against Sesoko is a matter of common cause and has been set out in my first ruling *in limine* in respect of the

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application for a stay of proceedings and therefore I do not consider it necessary to repeat same here.

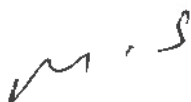

ANALYSIS OF EVIDENCE

3. Sesoko was charged with misconduct and the charge relating to him appears on paragraphs 3 of the charge sheet which is contained on Bundle "A" and more specifically at page A4 which reads as follows:

"You, Khuba and McBride altered the report which had been handed over to NPA, and deleted the information incriminating Lieutenant General Anwa Dramat the former National Head of DPCI, and/or Sibiya the Provincial Head of DPCI Gauteng, from the report in order to reach a conclusion that, Dramat and Sibiya have been exonerated by IPID when you knew or ought to have known that the final IPID report of January 2014 recommended that Dramat and Sibiya be criminally charged. By altering the report of January 2014, you and Khuba have made yourselves guilty of dishonesty and defeating the ends of justice".

4. To this end, the employer adduced evidence through Advocate Mosing ("Mosing") who testified, amongst other things, that the report dated 22 January 2014 was in actual fact and for all intents and purposes, the final report. It was put to Mosing that in line with Sesoko's version, the January report was not the final one as same had not been signed off by the Executive Director in line with the regulations which required that such a report be signed by the Executive Director.

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5. It was therefore further put to Mosing that the March report which was signed by McBride, Sesoko and Khuba was the one which was final and not the January one. Mosing refuted this version and stated unequivocally that the January report was the one which was final regardless of whether it had been signed by the Executive Director as those were internal IPID processes. The gravamen of Sesoko's charge is whether he, along with McBride and Khuba, acted in concert in altering the January report insofar as the conclusion whether to prosecute Dramat and Sibiya was concerned with the result that Sibiya and Dramat were therefore exonerated.
6. In essence the two reports, that being the January and the March reports, are the same save for the conclusions that they reached insofar as the prosecution of Sibiya and Dramat were concerned. Whilst the January report recommends that Sibiya and Dramat be charged and be prosecuted for their role in the Zimbabwe illegal renditions, the March report exonerates Sibiya and Dramat from any wrongdoing or participation in the Zimbabwe illegal rendition.
7. In essence Sesoko alongside McBride and Khuba were charged for altering the January report which had recommended that Sibiya and Dramat be prosecuted and resulting in the March report which then exonerated the pair from persecution. That is what is at the core of the charge against Sesoko. In other words, Sesoko does not deny the fact that he took part in authoring the March report however he denies that such amounted to an alteration as in his view, the January report was not final as same had not been signed by the Executive Director and he is therefore not guilty of any misconduct.
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FINDINGS AND REASONS THEREOF

8. Having heard the evidence by Mosing and having gone through the January report myself, it is difficult to comprehend how it could be said not to be a final report when in fact for all intents and purposes the January 2014 report was a final report and so any act that was committed thereafter to change the contents thereof ought to amount to an alteration and this is what happened when Sesoko, McBride and Khuba embarked on that fatal expedition to produce a different report, that being the March report, which sought to vary the contents of the January report insofar as the prosecution of Sibiya and Dramat were concerned.
9. This is especially so because the January report itself is by no means a draft report and it certainly does not say so as if there was still to be a further report over and above what had been concluded as of the 22 January 2014. Indeed the report is signed by Mr. Innocent Khuba and it is for this reason, amongst others that makes it difficult to comprehend the submission that the January report was not final or was not legitimate simply because it was not signed by the Executive Director.
10. Whether for a report to be authentic same had to be signed by the Executive Director is a matter of internal processes for the IPID and may very well be provided for in the regulations however that does not detract from the fact that the January report was final and that anything that was done thereafter amounted to altering that report. Here one is not dealing with the legitimacy or
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otherwise of the January report as it were, but dealing with Sesoko's conduct in altering some of the material contents of the January report and thereby exonerating Sibiya and Dramat from any wrongdoing in relation to the Zimbabwean illegal rendition.

11. It was common cause that, in co-authoring the March report, Sesoko did take part in the alteration of some of the material contents of the January report. This he did not deny at any stage and it was further common cause that the difference between the January and March reports was the exoneration of Sibiya and Dramat from any wrongdoing in relation to the Zimbabwean illegal rendition. What was in dispute was whether the March report amounted to an alteration as Sesoko contended that the January report was not final as it had not been signed by the Executive Director and therefore it could not be said to have been altered.
12. I have already expressed the difficulty I have in understanding the contention on Sesoko's part that the January report was not final simply because it was not signed by the Executive Director when, for all intents and purposes and quite apart from the fact that it was not signed by the Executive Director, the report was final and to argue otherwise is to elevate form above substance. In other words, Sesoko wanted the enquiry to believe that form is more important than substance. That is, even though in substance it is clear that the January report was final and recommended amongst other things that Sibiya and Dramat be charged for their role in the rendition saga, but simply because the report in his view did not comply with the regulations in that it was not signed

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by the Executive Director therefore it should not be regarded as final. If this is an invitation to sacrifice substance at the altar of form, such invitation must be rejected.

13. For these reasons, I find that the January report was final and that Sesoko's conduct in co-authoring the March report amounted to alteration of the January report which constituted misconduct on his part and it is for that reason that I found Sesoko guilty of misconduct. Something must be said about the final day of the hearing wherein I issued my ruling *ex tempore*. There is no doubt that fairness would have dictated that Sesoko takes a stand and put up his own version of events in his defence, in line with the well-established principle of our law that is *audi alterem partem* principle ("the audi principle").
14. However, it would seem that Sesoko elected to waive his right to be heard when he decided not to attend the proceedings on 16 August 2016 and instead forwarding, through his legal representatives, what purported to be sick notes with the hope that the chairperson would be hoodwinked by these purported sick notes and allow a postponement and thereby further delaying and frustrating the proceedings.
15. I say this because, when I looked at what purported to be sick notes which were presented by Sesoko's counsel, it was clear that these were only presented solely for the purposes of frustrating and delaying the hearing as it was very strange that a general practitioner, would have the requisite specialist knowledge to diagnose Sesoko with depression something which would require

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a psychiatrist or at the very least a psychologist but definitely not a general practitioner to diagnose. All the general practitioner could do would have been to refer Sesoko to a specialist who could then diagnose Sesoko with depression or whatever might have been wrong with him and nothing more. For these reasons I found the sick notes not to be authentic.

16. Because I was not persuaded with the sick notes, I then ruled that the hearing must proceed and I took it that Sesoko had then elected to waive his right to put his case and that is why I then ruled that the proceedings proceed in his absence. In the end, there was only one version before me as a chairperson and that is the employer's version which could not be second guessed in the absence of a version to the contrary and which could be more probable than that of the employer.
17. Even though one could, and of course was able to glean from the versions which were put to Mosing as to what sort of version Sesoko would put when he got the opportunity to state his side of the story, it still would have been preferable, if not mandatory, for Sesoko to take a stand and put his own version of events in line with the *audi* principle. However it is one thing for an employee to be afforded a right which was done in this case hence the disciplinary hearing but is quite another thing altogether for the employee to shun that right, turn his back on it and elect to waive it by adopting a strategy that is aimed at delaying and frustrating the very same hearing which is aimed at providing him with a platform to put his case before his fate is decided.

MS 141

18. The employer could only do so much and nothing more. The strategy that was adopted by Sesoko in frustrating and delaying the proceedings flies in the face of expeditious resolution of disputes and it can never be fair to the employer and indeed to the taxpayer that someone who is on a precautionary suspension and whose case has been dragging for over a year whilst he is sitting at home doing nothing and yet getting paid every month by the taxpayers is allowed to continue doing so for God knows how long but as long as he gets his salary every month then he is content with the proceedings being delayed because it suits his strategy.
19. From day one when I had just been appointed to preside over the hearing, it was clear that Sesoko had no intention of having the hearing proceed and that was demonstrated by his legal team raising a flimsy point *in limine* which aimed to stay the proceedings until McBride's Constitutional Court case was determined and quite how those two were linked is still beyond me, but if anything, this serves to demonstrate just how unwilling Sesoko was to take part in these proceedings. Having dismissed that point *in limine* and further furnished my reasons thereof Sesoko then sought to take my ruling on review and also applied for an interdict against the proceedings pending the determination of the review.
20. Once again that to me is not indicative of someone who wants his dispute to be resolved expeditiously but is in fact indicative of someone who is desirous in frustrating and delaying the proceedings something which should never be countenanced. It is a small wonder then that Sesoko lost that Labour Court

MS 141

case wherein he sought to interdict the proceedings. Because it was clear to me on 16 August 2016 that Sesoko was still employing his delaying tactics as he had been doing all along and also because of the nature of what purported to be sick notes which his legal representatives presented to me that the hearing had to proceed as it was clear to me that Sesoko had elected to waive his right to put forward his own version of events.

21. Based on a single version which was before me, and that is the employer's version of events which was left unchallenged and notwithstanding Sesoko's versions which were put to the witness during cross-examination which had no merit in my view, I found the Sesoko guilty of misconduct. I thereafter proceeded to invite parties to address me on mitigating and aggravating factors so as to arrive on what would be an appropriate sanction and whilst the employer did address me on aggravating factors, Sesoko's legal counsel declined to address me on mitigating factors as in his view it would not serve any purpose as his client was not there.
22. Once again, I had only aggravating factors before me and there were no mitigating factors as to why a sanction of dismissal should not be preferred especially in view of the nature and seriousness of the offense and for that reason I then issued a sanction of dismissal. This is especially so because the offense with which Sesoko had been charged was quite serious and involved an element of dishonesty on his part which then went to the heart of the employment relationship and had the effect of destroying the trust relationship

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between Sesoko and the employer and for that reason the only appropriate sanction that ought to have been preferred was dismissal.

23. In any event, there were never mitigating factors which were presented before me as to why dismissal should not be preferred as such invitation was rejected whilst on the other hand, the employer did address me on aggravating factors and stated, amongst other things, that Sesoko's conduct had the element of dishonesty and that therefore it had destroyed the trust relationship between him and the employer. These are therefore the reasons as to why I found Sesoko guilty of misconduct and further issued a sanction of dismissal.

M Zondo

Chairperson

6th October 2016

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SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

HUMBULANI INNOCENT KHUBA

do hereby state under oath as follows:

1. I am an adult male and a Chief Director in the employment of the Independent Police Investigative Directorate ("IPID") as a Provincial Head for Limpopo based in Polokwane.
2. The facts deposed to below are within my personal knowledge, unless otherwise stated or indicated by the context, and they are, to the best of my belief, true and correct.
3. On 16 July 2019, I deposed to an affidavit which I provided to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ["my main affidavit"].
4. The purpose of this supplementary affidavit is to add two annexures mentioned in my main affidavit, which during the filing of the documents, and the attesting thereto, were mislaid, and also to correct a typing error in the description of Annexure "HIK 7".
5. **Annexure HIK 6**

5.1. In paragraph 59 of my main affidavit I stated, *inter alia*, that: ..."

Accordingly, I decided to send Colonel Madilonga's statement for analysis

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by an expert statement examiner, Anna-Mari Van Staden, on or about 4 October 2013. After analysing his affidavit, Ms Van Staden concluded, as confirmed in her email dated 04 October 2013, that: "...this statement is not a truthful reflection of what happened...". This confirmed my suspicion that Colonel Madilonga had been put under pressure to give manufactured evidence, and that Colonel Madilonga was in fact lying. A copy of the email and the analysed affidavit of Colonel Madilonga is attached marked **Annexure "HIK 6"**

- 5.2. This email was erroneously omitted in the annexures filed in the main affidavit and were consequently not signed by the Commissioner of Oaths and myself. I confirm that this document is in fact the annexure mentioned in my main affidavit, and request that the annexure be included in the annexure filed as **Annexure "HIK 6"**, in my main affidavit.

6. **Annexure HIK 7**

- 6.1. In paragraph 60, I state that: 'For completeness, a copy of Anna-Mari Van Staden's report is also annexed hereto, marked **Annexure "MN 7"**.'
- 6.2. Although the annexure was correctly filed, the annexure number should read "**HIK 7**", and not "**MN 7**", which is a typing error.

7. **Annexure HIK15**

- 7.1. In paragraph 87 of my main affidavit I mention, *inter alia*, that: "...On 21 May 2015 I received a letter of precautionary suspension signed by Mr Kgamanyane. The letter was served on me by Ms Netsianda, Chief Director Corporate Services"....

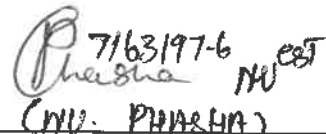
- 7.2. In paragraph 88, I attached the letter of suspension as **Annexure "MN 15"**. The correct numbering of the annexure should read: **"HIK 15"** and not **"MN 15"**.
- 7.3. This annexure was not included in the annexures filed in the main affidavit and were consequently not signed by the Commissioner of Oaths and myself. I confirm that this document is in fact the annexure mentioned in my main affidavit, which was erroneously omitted and request that the annexure be filed as **Annexure "HIK 15"**, in my main affidavit.
8. I know and understand the contents of this declaration.
I have no objection to take the prescribed Oath.
I consider the oath to be binding on my conscience.



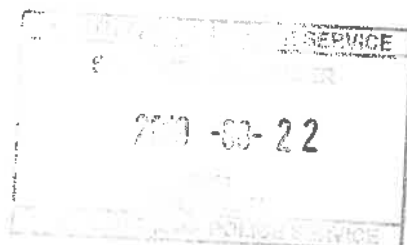
HUMBULANI INNOCENT KHUBA

I certify that the deponent who acknowledges that he knows and understands the contents of this affidavit; that it is the truth to the best of his knowledge and belief and that he has no objection to taking the prescribed oath and regards the same as binding on the deponent's conscience and the administration of the oath complied with the Regulations contained in Government Gazette No. R1258 of 21 July 1972, as amended. This affidavit is signed and sworn to before me at PHAKWENI SABS on this the 22nd day of August 2019 at

13:30.



COMMISSIONER OF OATHS



EX OFFICIO: CST

FULL NAMES:

MICHAEL VINCENT PHARMA

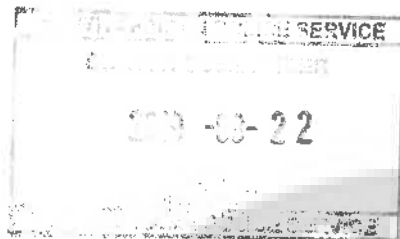
PHYSICAL ADDRESS:

71 DUNDALK AVENUE

PARKVIEW

DESIGNATION:

CST



ANNEXURE D

ANNEXURE D



Fw: Statement Analysis on Statement Diepsloot cas
Innocent Khuba to: Boltumelo Sedumedi

2015/02/27 03:54 PM

----- Forwarded by Innocent Khuba/Limpopo/IPID on 2015/02/27 03:54 PM -----

From: annemari@prefor.co.za
To: Innocent Khuba <ikhuba@ipid.gov.za>
Date: 2013/10/04 07:12 AM
Subject: Statement Analysis on Statement Diepsloot cas

Mr Khuba,

Attached is the statement of Madilonga. I did a Statement Analysis (SCAN) on it and this statement is not a truthful reflection of what happened. We can discuss it later today when I phone you.

Regards
Anne-mari

SCAN ZIMBABWE.pdf



H1 MUP

unauthorised disclosure, dissemination, reliance, use, interception, alteration, tampering or any other form of corruption of this e-mail or any part hereof is strictly forbidden. E-mails cannot be guaranteed to be secure or free of errors or viruses. As such, we advise you to carry out your own virus checks, as neither this entity nor the transmitter accept any liability whatsoever, arising from this e-mail or for any consequence of its use or storage. No stated, tacit or implied view, opinion, advice or position of the transmitter necessarily represents that of this entity. If verification of this e-mail is required, please request a hard-copy version on an official letterhead of this entity. Copyright in this e-mail is and remains vested in this entity and/or in the transmitter. This entity fully reserves the right, without notice, to monitor outgoing and incoming e-mail and other transmissions or communications on, in, through or by means of its e-mail and telecommunications systems.





ipid

**Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA**

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Private Bag X 941, Pretoria, 0001
Tel: (012) 399 0025 Fax: (012) 399 0144
E-Mail: ikgamanyane@ipid.gov.za <http://www.ipid.gov.za>

Mr IH Khuba
Provincial Head: Limpopo
Independent Police Investigative Directorate
Private Bag X 9525
POLOKWANE
0700

21 May 2015

Dear Mr Khuba

RE: YOUR PRECAUTIONARY SUSPENSION WITH FULL PAY

1. I have received written representations from your attorneys, Thabiso Maseko Attorneys on 19 May 2015 on why I should not place you on suspension pending the disciplinary enquiry. I have carefully considered the representations and I am not persuaded that suspension is not an appropriate step to take in the circumstances. The allegations against you are very serious and put the integrity of the IPID into disrepute, and the image of IPID will be damaged if you are allowed to perform your duties whilst the disciplinary enquiry is pending.
2. I therefore place you on precautionary suspension with full pay and benefits pending the finalisation of the disciplinary enquiry. The disciplinary enquiry will be instituted and finalised within 60 days depending on the chairperson of the disciplinary enquiry.

1 | Page

YOUR PRECAUTIONARY SUSPENSION WITH FULL PAY / MR KHUBA

HI
IPUP

3. You are required not to take with you any document or instrument which belongs to the employer. Your suspension is with immediate effect.

Yours faithfully


MR K. KGAMANYANE
ACTING EXECUTIVE DIRECTOR
INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Acknowledged

~~2015/05/21~~

2015/05/21

Received the following assets:

① Acer tablet

② Charger

11001 (Bar code)