



EXHIBIT Y 6

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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SUPPLEMENTARY 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.
3. This is supplementary affidavit to the two affidavits which have already been submitted to the Commission. The aim of this affidavit is to deal with the Werksmans report and other issues raised by the Chairman during my testimony which I could not clarify immediately.
4. The Werksmans report does not reflect the total facts uncovered during their investigation but is an unbalanced report that seeks to present a specific picture which is devoid of truth. This report was the basis upon which both disciplinary hearings and criminal proceedings were pursued against me.
5. I was called to three interviews at Werksmans regarding the existence of the two reports prepared by me relating to Diepsloot Cas 390/07/2012. 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 Mr Sandile July ("Mr July"), dated 24 April 2015. I point out that my last interview with Werksmans was on 23 April 2015. This, notwithstanding,



their report was produced the very next day. A copy of the Werksmans report is attached hereto marked Annexure "HIK/W 1."


6. The credibility of the Werksmans report is highly questionable in both the process and substance which I would like to deal with below.
7. On 26 March 2019, I had my first interview at Werksmans, as shown by the transcripts of my interviews which was provided to Mr Robert McBride's ("**Mr McBride**") attorneys, Adams and Adams, by Werksmans annexed hereto marked annexure "HIK/W 2."
8. Mr July, who prepared the Werkmans report, deposed to an affidavit in the criminal proceedings against me in which he stated that this interview was not recorded and transcribed. However, it is apparent from the transcript provided by Werksmans to Mr McBride's attorneys themselves that this interview had been transcribed a year before Mr July deposed to this affidavit, a copy of which I annex marked "HIK/W3".
9. At the beginning of the interview I was assured that the information gathered would not be used against me in either departmental or a criminal investigation. I proceeded with the interview without legal representation on this basis. However, for some reason, this is not reflected in the transcript of the interview sent to Mr McBride's attorneys.
10. As can be seen by the transcript of the interview, it starts with Mr July introducing himself and his team and then saying that I could proceed. The transcript does not reflect the specific question asked by Werkmans to which I was required to "*proceed*" on. This shows that there is part of the interview which was either not captured on record or deleted/removed from the recording.
11. In **paragraph 3.1.20** it is stated that Colonel Botsotso Moukangwe ("**Colonel Moukangwe**"- now Brigadier Moukangwe) and I finalised our investigation and provided a report with recommendations. This is not true. It was made clear that this was an interim report and that there were a number of outstanding investigations. **Paragraphs 3.1.24 to 3.1.29** of Werksmans' report refers to the fact that Colonel Moukangwe regarded the 22 January 2014 report as the Final

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Report as all that was outstanding were the warning statements, which General Anwa Dramat ("**General Dramat**"), General Shadrack Sibiya ("**General Sibiya**") and Captain "Cowboy" Maluleke ("**Captain Maluleke**") had refused to provide. This is not true and was dealt with by me in my evidence.

12. However, Werksmans state that Advocate Anthony Mosing ("**Advocate Mosing**") regarded the report dated 22 October 2013 as a draft report, but regarded the 22 January 2014 report as a final report. This is contradicted by the statement the state advocate who guided the investigation with Advocate Mosing, Advocate Billy Moeletsi ("**Advocate Moeletsi**"), who stated that the report was a draft report in paragraph 7.6 of his sworn affidavit in the criminal proceedings against me, annexed hereto marked as annexure "**HIK/W 4**".
13. In addition, it is contradicted by Advocate Mosing's own manuscript notes on the 22 January 2014 report reflecting that it was a "*Draft*", a copy of which is annexed hereto marked as annexure "**HIK/W 5**."
14. I also want to point out that Advocate Mosing provided me with input when I drafted my First Report as can be seen from his manuscript comments on the version of the First Report which I sent to him dated 22 October 2013, annexed hereto marked "**HIK/W 6**".
15. In addition, Paragraph 3.1.32 of Werksmans' report states that paragraph 4 of Mosing's memorandum specifies outstanding investigations required to finalise the report which included, analysis of cellular phone records, a report on the analysis of vehicle tracking and warning statements of General Dramat, General Sibiya and Captain Maluleke. This memorandum was submitted on 12 November 2013 by Advocate Mosing and addressed to Advocate Jiba and is annexed hereto marked annexure "**HIK/W 7**."
16. In addition, Advocate Mosing prepared another memorandum on 13 February 2014 in which he reiterated there were matters outstanding in the investigation at the time of him compiling such memorandum and submitting the docket. The recommendations and findings by Werksmans ignored this important assertion made by Advocate Mosing. This memorandum was addressed to Advocate

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Nomgcobo Jiba ("**Advocate Jiba**") and Advocate Andrew Chauke ("**Advocate Chauke**") and is annexed hereto marked "**HIK/W 8**".

17. **Paragraph 3.2.1.3** of Werksmans' report states that the Second Report is not an additional report in the rendition matter, nor does it appear to be an update of the first report as implied by me. In **paragraph 3.2.1.4** Werksmans concludes that upon perusal of the first and second reports, it was clear that *"the second report was the version of the first report altered by the deletion of certain evidence to arrive at a particular conclusion."*
18. This conclusion by Werksmans is incorrect. The process which was followed in preparing the Second Report was to review the existing evidence in light of the additional evidence that had come to light which justified our coming to a different conclusion from that come to by me in my interim report, which I explained fully to Werksmans in my interview with them on 26 March 2015.
19. **Paragraph 3.2.1.17** of the report states that I later stated that I was concerned about the deletion of certain evidence which implicated General Dramat. This evidence referred to is that provided by Colonel Ndanduleni Madilonga ("**Colonel Madilonga**") which had turned out not to be credible and in any event, only linked General Dramat to the entry of the Zimbabwean police officials into the country, and not their exit with the Zimbabwe nationals from the country, ie their rendition from the country.
20. This was dealt with by me in my confirmatory affidavit to Mr McBride's High Court application which is attached hereto as annexure "**HIK/W 9**". The process which led to the so-called "*Second Report*" was also fully dealt with by me in my first affidavit to the Commission, including the review of the existing evidence that led to General Dramat being excluded as a suspect and the amendment of my initial recommendation that he be charged.
21. This explanation is also captured on pages 95 and 96 of the transcript of my first interview where I made it clear that no parts of the report were removed with the intention of exonerating any person. The evidence was excluded because it was not credible or relevant as it did not implicate Generals Dramat or Sibiya in the rendition. I stress that the evidence remained in the docket.



Moreover, it is not the report that determines whether or not a decision is taken to prosecute a matter; this is informed by the evidence contained in the docket.

22. This is confirmed by Advocate George Baloi ("**Advocate Baloi**") who took the decision to prosecute Generals Sibiya and Dramat dealt with by me below.
23. Pages 43 and 44 of the transcript of my interview on 26 March 2015 reflects that I informed Werksmans that there was a need to update the docket in light of the email dated 28 February 2014 (annexed to my statement made to the Commission) to which I attached General Sibiya's warning statement. This is the email in which I had indicated that further evidence had come to light to which Advocate Mosing responded 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."
24. I understood that there was a need to collect the docket from Directorate of Public Prosecutions ("**DPP**") of South Gauteng and update it with new evidence. This email and its evidential importance to the existence of the so called Second Report is not referred to by Werksmans in their report, although it is apparent from the transcript that I had told them about it.
25. **Paragraph 5.1.1.6.1** of the Werksmans report states that it is the version of both Colonel Moukangwe and Advocate Mosing that General Sibiya's cellular phone records were already available to me before the submission of the First Report. Although this is correct, it entirely misses the point. What was outstanding was the expert analysis of these cellular phone records, which exonerated General Sibiya as they established exclusively that he could not have been where the witnesses stated he was. This is corroborated by Advocate Mosing who referred to such analysis in his memorandum dated 12 November 2013 to Advocate Jiba and his memorandum dated 13 February 2014 addressed to both Advocate Jiba and Advocate Chauke.

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26. This is confirmed in **paragraph 3.1.17** of the Werksmans report where it is clearly stated that although I was in possession of General Sibiya's cellular phone records, these had to be interpreted by an expert.
27. **Paragraph 5.1.3.2.1** states that I said that I did not initial each page of the so called Second Report. This point came about when Mr July alleged that evidence had been deleted from the Second Report. I proffered this as an explanation on the assumption that evidence had indeed been deleted from the Second Report as told to me by Werksmans. I stressed that I did not know what happened to the second report after I had signed it and given it to Mr Sesoko and was accordingly unaware if anything had been deleted from it thereafter.
28. As it turns out, nothing was deleted from the second report after we signed it.
29. It later became apparent that what was referred to was the deletion in the so called Second Report of evidence in my First Report. I have explained fully in my evidence before the Commission how and why Colonel Madilonga's evidence was excluded. In my confirmatory affidavit in the proceedings brought by Mr McBride, I also explained fully why certain information which was in the First Report was not in the Second Report and *visa-versa*.
30. In any event, a recommendation report by an investigator does not bind the National Prosecuting Authority ("NPA") to follow the recommendations made and is simply a guide to the prosecutor, who will ultimately make the decision whether to prosecute or not, having regard to the evidence contained in the docket. No evidence or statements were removed from the docket.
31. In addition, the interview between Mr July, Advocate Baloyi and Advocate Sibongile Mzinyathi ("**Advocate Mzinyathi**") on 17 April 2015 should have been properly captured by Werksmans in their report. Pages 23 to 25 of the transcript of this interview clearly demonstrates what the value of the recommendations are to NPA and sets out what process was actually followed in the rendition matter. A copy of the transcript of their interview is annexed hereto marked "**HIK/W-10**". There he said that he does not look at reports he looks at evidence in the docket.

32. Advocate Baloyi stated that he took a decision without consulting the reports because the reports had been compiled a year later and may not have properly analysed the evidence. He stated that these reports were neither evidence nor admissible in court. He stated that he reads the docket in order to look for admissible evidence. The purpose of the reports is to serve as a guide to the evidence contained in the docket. This was down played by Werksmans in their report (page 69).
33. Advocate Baloyi's view as expressed to Werksmans in his interview with them is confirmed in his e-mail to me dated 10 March 2015 annexed hereto marked "HIK/W 11". I had received a call from Advocate Baloi indicating that he had been seized with the rendition matter. He indicated that based on the information in the docket, he had said that there was no way that he would charge and prosecute Generals Dramat and Sibiya.
34. However, I then consulted with Advocate Baloi on 3 March 2015 together with Mr Viceroy Maoka ("**Mr Maoka**") from IPID's Litigation and Advisory Services. After leaving the meeting to consult with his superiors, he returned and stated that we would have to bite the bullet and that he had made the decision to prosecute the Generals. I got the impression that this change of view had been dictated by his superiors.
35. When I challenged him on this, he denied that a final decision had been taken and stated that it was subject to ongoing investigation.
36. This is confirmed in the affidavits submitted by me and Mr Maoka in the criminal proceedings against me, annexed hereto marked "HIK/W 12" and "HIK/W 13" respectively.
37. Werksmans state in **paragraph 5.4.14** that "*Mzinyathi and Baloi 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.


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38. However, it was made abundantly clear to them by Advocate Mzinyathi in his interview (page 22) that they did not rely on either the first or second reports in making their decision. He stated:

"But one thing is for sure, that when we got the first report we had almost reached a stage where our mind was clear about this thing. In fact GEORGE [Baloi] told me that he didn't even read the report."

39. I thus fail to understand how Werksmans could recommend that charges be brought against us for obstruction of justice.
40. In **paragraph 3.1.3** it is stated that Advocate Mosing and Advocate Moeletsi were merely tasked to provide guidance to Colonel Moukangwe and me during the course of the investigation and never to make the decision whether to prosecute. This demonstrates that what I stated in my submission to the Commission that this was a prosecution driven investigation is true. It was my understanding that they would take the decision whether to prosecute.
41. Even if it is true that it was not contemplated that they would take the decision to prosecute or not, this does not mean that it was IPID's decision whether to prosecute or not. On the contrary, our role was to provide recommendations with the guidance of the advocates we had been instructed to work with. It was always ultimately the NPA who would take the decision whether to prosecute or not. Indeed, it is stated in **paragraph 3.1.34** that according to Advocate Mosing, we viewed it to be up to Mr Mxolisi Nxasana (the then National Director of Public Prosecutions) to make a decision on the merits of the case.
42. What is stated in **paragraph 3.1.21** that the 22 January 2014 report was submitted as a final report and that I expected the NPA to take further action as required by law on the basis of the recommendations set out therein, is completely untrue. The NPA is required by law to exercise its own discretion as to whether to prosecute or not.
43. It is not true that I complained to the NPA when I heard that they had decided to prosecute General Dramat in the face of our recommendation.

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44. The consultation with Advocate Baloyi about his decision to prosecute is referred to in **paragraph 3.2.2.6** of Werksmans' report and page 26, 27 and 28 of the transcript of the interview between Mr July, Advocate Baloyi and Advocate Muzinyathi.
45. As I have stated above, after a telephone call from Advocate Baloyi and a subsequent meeting held on 10/03/2019 where Mr Maoka was present, I decided to confirm our discussion in writing. This was because by this time the investigation into the alleged two conflicting reports was pending and I wanted to have a record of everything. The email sent to confirm what was discussed telephonically and during the meeting is annexed above marked "**HIK/W 11**". In the same email I indicated that the decision to prosecute was his prerogative. I thus did not in any way regard that he was bound by the recommendations made by us in the Second Report as suggested by Werksmans.
46. During my first appearance at the Commission, I had forgotten about these events and was reminded of them when I started to peruse Werksmans Report and in order to prepare my response as requested by the Chairman of the Commission.
47. It is correct that the Department sought a legal opinion from Advocate Barry Roux with regard to these reports. I did not refer to this as he had indicated that the NPA would not have made its decision whether to prosecute or not on the basis of either of the reports.
48. **Paragraph 5.1.3.2.3.5.4** states that I contradicted Mr McBride as to the reasons why he signed the report. This statement is not in accordance with what I stated in my interview as recorded in the transcript. The transcript makes it clear that I stated that Mr McBride signed the second report as the head of the department and because of his participation in preparing the report, (See page 2 of the interview dated 23 April 2015.) They decided to only record in their report what I said about his participation and left out the fact that I had also said that he was the Head of the Department at the time.

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49. This is in accordance with Regulation 5 (1) of the IPID regulations, which must be read with section 7(4) of the IPID Act. This confirms that the investigator must submit his report to the Executive Director.
50. **Paragraph 5.1.3.2.1.6** of the report states that Werksmans accepts my version of events. However, these findings are entirely contrary to my explanation as to how the so called Second Report came about. Page 85 and 86 of the transcript record the explanation provided by me as to the circumstances under which each report was prepared and why they differed. It is clear that this explanation cannot be construed as in any way deliberately excluding evidence in an effort to exonerate General Dramat as averred.
51. **Paragraph 3.1.19** states that according to me, General Dramat, General Sibiya, Colonel Maluleke and Colonel Verster all refused to give statements. This is not true. The correct capturing of what I said is as stated in paragraphs **3.1.25.1.1** and **3.1.25.1.2** of Werkmans' report, from which it is clear that neither General Dramat nor General Sibiya refused to give a statement. What I in fact said was that General Dramat wished to avail himself of his right to legal representation and that General Sibiya requested that questions should be sent to him which he would address.
52. Regarding **paragraph 3.1.25.1.3**, Colonel Maluleke gave a warning statement but decided to exercise his right to remain silent. Colonel Verster did not give a statement as he always purported to be unavailable when I sought to take a statement from him. This, I perceived to be an excuse for not providing a statement.
53. **Paragraph 3.2.1.19** of the report states that I stressed that if there were changes to the First Report, I had no way of knowing because I did not check whether the final version was the same version that I had emailed to Mr Sesoko. This comment was made in view of the assertion made that I had deleted certain parts of the report in order to exonerate General Dramat. This is captured in the transcript of my interview on 23 April 2019 on pages 20 and 21. My actual words were *"I could not detect whether something was taken out, I*



could not detect whether there was any addition which was not part of what I typed in". My words were thus, clearly misinterpreted by Werksmans.

54. **Paragraph 3.2.1.24.1** states that the Second Report had been changed in so far as portions of certain statements and/or evidence and even analysis of findings which are reflected in the First Report had been altered to remove wording which implicates General Dramat as having knowledge of the rendition. This needs to be read with the comparison of the two reports appearing in **Section B** of their report:
55. On page 34-35 of their report reference is made to the part of Madilonga's statement referred to on page 9 of my First Report, which was allegedly deleted in the Second Report in order to exonerate General Dramat. This was not referred to in the Second Report because it was felt, after discussion with Mr Sesoko, that this evidence, even if it were true, was not relevant as it suggested that General Dramat may have been involved in allowing the Zimbabwe police to enter the country in order to attend a meeting with him; it did not in any way implicate him in the rendition of the Zimbabwe nationals by the Zimbabwe police back to Zimbabwe.
56. The reference to the fact that Superintendent Ncube was going to meet General Dramat as he had organised with General Dramat to assist them in tracing the suspects is not deleted, notwithstanding that it points to his providing assistance to the Zimbabwea police to arrest the nationals. This is in line with the mutual co-operation between the South African Police and the Zimbabwean Police with regard to cross-border crimes.
57. More importantly, Werksmans have excluded the last sentence contained in the section commencing *"For of the section the period of two weeks..."* in both reports, which states:

"They did not discuss anything about the operation they had in Gauteng with General Dramat."

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58. Werksmans also fail to mention that there were other deletions from page 9 of the First Report from the Second Report. This included the section dealing with Captain Maluleke that read:

"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 Zimbabwean police entered the country there had been busy trying to trace the suspect." (sic)

59. This was not referred to in the second report as it was not found to be credible and had been demonstrated to be untruthful by the expert analysis of Colonel Madilonga. Too much detail had been provided, especially with regard to the absence of an extradition agreement, which raised suspicion about the statement made, which we believed had been made specifically to implicate his "big bosses". Furthermore, the statement made was hearsay and could only be of evidential value if it was corroborated by Captain Maluleke, which was not the case.
60. I point out that Captain Maluleke, who is referred to as "Cowboy," was a member of Directorate of Priority Crime Investigation ("DPCI") and one of his "big bosses" would have been General Dramat.
61. The same applies to the alleged deletion from **paragraph 5.2** on page 21 of my First Report (which dealt with the Success Report dated 4 February 2011) referred to on page 36 of the Werksmans report. The evidence referred to was that of Captain Maluleke, who had deposed to an affidavit that General Dramat had a meeting with the Zimbabwe police about their nationals that shot and killed a Zimbabwean policeman and that Captain Maluleke was tasked to trace and arrest the said nationals. This was not included as it did not implicate General Dramat in the rendition of these nationals.


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62. The success report was generated by Captain Maluleke and acknowledged by General Toka of CI and not General Dramat.
63. The meeting alleged in the success report to have taken place on 5 November 2010 could not be corroborated. Although the former spokesperson of the DPCI, Mr Macintosh Polela ("**Mr Polela**") referred to a meeting between General Dramat and the Zimbabwean police, this could not have been the meeting alleged to have taken place on 5 November 2010, as he was only appointed in December 2010. Moreover, General Dramat indicated in his statement that it was not unusual for him to meet with the Zimbabwean police in the spirit of the cross-border cooperation between the two countries.
64. The averred deletion of the fact that the emails of the photographs of the arrested suspects were sent by Captain Maluleke to General Dramat's PA (referred to in paragraph 5.3 on page 21 of the First Report) is also not relevant as it did not establish that he received the photographs, and even if he had, it did no more than indicate that he may have been aware of the arrest of the nationals, and no way implicated him in their subsequent rendition. It also bears mention that what was also deleted was the fact that these photographs were also sent to Phumla (General Dramat's personal assistant), Zimbabwean Police and members of Crime Intelligence.
65. The details in the letter to stakeholders dated 20 August 2012 referred to on page 22 of the First Report which describes General's Drama and General Sibiya's visit to Zimbabwe in August 2010 and General Sibiya's appointment as the co-ordinator on cross-border crimes between South Africa and Zimbabwe is not in the second report because Mr Sesoko and I agreed that these details had little relevance and evidential value to the allegations as this meeting took place more than a year before.
66. In any event, there was nothing untoward in cross-border co-operation between South Africa and Zimbabwe with regard to cross-border crimes.
67. Moreover, this letter remained in the docket.

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68. Reference is made to the fact that in the Second Report, the fact that Colonel Maluleke had addressed a letter "*routed to General Dramat*" indicating that he had conducted an operation with the Zimbabwean police during which Mr Bongani Moyo (**Mr Moyo**) was shot, was not mentioned. This letter had been found on Colonel Maluleke's computer, but there was no evidence that this letter had been sent to, or received by, General Dramat. In addition, as I indicated in my testimony before the Commission, the evidence concerning Mr Moyo could not be verified.
69. The analysis of General Sibiya's cellular phone records which reflected that he had communicated with officers involved in the operation and that more than 20 SMS's had been sent to General Dramat (to which he had not replied) and to General Godfrey Lebeya (**General Lebeya**) was referred to in the First Report on page 23. This was not referred to in the Second Report as it had been conclusively established that these messages could not have involved the operation as the subsequent analysis of these cellular phone records indicated unequivocally that General Sibiya was not where members of CI had placed him and he thus, could not have been involved in the rendition as averred by them. These sms communications were thus rendered irrelevant and were thus, not included in the second report.
70. As is made clear in the Second Report, the application for General Sibiya's cellular phone records had been sought in terms of section 205 of the Criminal procedure Act, in order "*to test the version of the witnesses who alleged to have seen Major General Sibiya at the crime scene.*" His cellular phone records were sent for analysis of his movements and it was found that he was not in Diepsloot where it was averred that he had been.
71. The reference to the communication between Colonel Andre Neethling (**Colonel Neethling**) and General Sibiya was not removed in the Second Report (see page 10).
72. There it is stated that, referring to Colonel Neethling:

"He also remember receiving a call from Captain Maluleke requesting escort of high risk suspects to Musina since he had to hand them

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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."


73. The analysis of this evidence differed in the second report because Colonel Neethling could not positively affirm that he had reported the arrest of the suspects to General Sibiya but, merely assumed that he must have done so as General Sibiya was his superior.
74. In addition, after debating the issue with Mr Sesoko, it was felt that the fact that Colonel Neethling's cellular phone records indicated that there had been communication between Colonel Neethling and General Sibiya at the relevant time, had no evidential value as it was entirely usual for Colonel Neethling to report to General Sibiya in the normal course of his duties. The analysis of Colonel Neethling's cellular phone records for the period prior to the rendition and months thereafter, indicated no change in the communication patterns during the period of the rendition.
75. Similarly, Colonel Maluleke's cellular phone records indicating his communication with General Dramat during the period of the rendition was no different to that between him and General Dramat for the three month periods before and after the rendition.
76. As I have already indicated, the cellular conversation between Colonel Madilonga and General Dramat on the entry of the Zimbabwean police did not implicate General Dramat in the rendition and was thus, no longer relevant.
77. Similarly, the reference to the fact that General Dramat's cellular phone records for the period 20 October 2010 to 28 February 2011 shows that only one call from Colonel Madilonga's number, was not mentioned as this was for the period when the Zimbabwean police entered the country. It did not in any way implicate him in the rendition. It was thus not referred to in the Second Report (page 29-30 of the first report).
78. The fact that it was averred in the success report generated by Colonel Maluleke that a meeting had taken place between General Dramat and the

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Zimbabwean police on 5 November 2010 (the day after he received a call from Colonel Madilonga from the border seeking permission to enter the country), its relevance was discounted in the second report as on discussion with Mr Sesoko, it was felt that without evidence as to what was discussed at this meeting, it was pure speculation that the rendition was discussed and accordingly, that a prima facie case could not be made out against General Dramat without corroboration (page 30 of the first report).


79. In the First Report I was persuaded by the aforementioned prosecutors that the fact that General Dramat committed government resources to the operation implicated him. This despite the fact that he did not sign any claim from Captain Maluleke and delegated responsibility to General Sibiya to assist the Zimbabwean police in tracing wanted suspects. This was in terms of the cross-border co-operation agreed between the South African and the Zimbabwean police services. This did not imply that there could be unlawful extraditions.
80. In the second report, on discussion with Mr Sesoko, it was felt that this in no way implicated General Dramat, and it was therefore, excluded.
81. The averment by Constable's Mkasibe and Mgwenya that shortly after the photographs of the arrest of the Zimbabwean nationals had been taken, General Dramat came from house no 1 and congratulated them and warned them not to tell anyone about the arrest was excluded from the second report as after discussion with Mr Sesoko, it was agreed that this was not credible evidence (first report page 31). This evidence was from officers from CI where General Mdluli was stationed.
82. Moreover, this evidence was not corroborated by Colonel Macintosh Polela who denied having seeing General Dramat, notwithstanding that he had been dismissed by General Dramat and may have had an axe to grind with him. In addition, the members of Tactical Response Team ("TRT") who were there at the relevant time, did not corroborate this version proffered by the officers from CI.

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83. In any event, even if General Dramat had congratulated the officers for the arrest, there would have been nothing untoward in this as the suspect was wanted for violent crimes in South Africa.
84. The fact that General Dramat's personal assistant was sent photographs of the arrest by Colonel Maluleke was excluded in the second report as in discussions with Mr Sesoko it was clear that there was no evidence that these photographs had been viewed by General Dramat. In addition, there was nothing untoward in the cross-border co-operation between the two countries and this in no way implicated General Dramat in the unlawful rendition of the suspects who had been lawfully arrested in South Africa, (First Report page 31).
85. The fact that there had been 30 sms's sent from General Sibiya to General Dramat "*at various milestones of the operation*", was also found not to be relevant as it was entirely normal that he would communicate with his superior and this in no way established that the sms's concerned the illegal rendition. This broad statement without specifying the milestones and without being able to link the sms's to the illegal rendition was felt not to be sufficient evidence to link General Dramat to the illegal rendition. This was thus, excluded from the Second Report (First Report page 31).
86. General Dramat's report to Parliament that suspects had been legally deported to Zimbabwe (first report pages 31-32) was not referred to in the second report because it was based upon Captain Maluleke's assurance that this was the case, which General Dramat had accepted. However, on investigation by me, it was found that the deportation documentation which Captain Maluleke provided in support of his assertion, was fraudulent. It turned out that the South African official at the Border responsible for deportations was on leave on the date of the averred deportation, and she insisted that nobody else would have had access to her stamp, and each individual responsible for deportations had their own unique stamp. This was only revealed after General Dramat had made the aforementioned report to Parliament and he had no way of knowing at the time of the report that what he said to Parliament was not true.

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87. The letter sent from the Zimbabwean authorities to Colonel Ntentei congratulating the members involved in the arrest of the suspects that they were seeking in connection with the death of the Zimbabwean Superintendent, was not addressed to General Dramat, but rather to CI and did not implicate or make mention of General Dramat. The fact that there was co-operation between South Africa and Zimbabwe to arrest suspects did not mean that General Dramat was involved in their illegal rendition.
88. The witness evidence placing General Sibiya at the scene of the arrest and the planning records was excluded in the second report as the analysis of his cellular phone records, which was obtained after the signing of the first report, indicated that the evidence provided was not true and that General Sibiya was not where the witnesses said he was.
89. As I indicated in my evidence before the Commission, this caused me to amend the First Report and to exclude my recommendation that General Sibiya be charged.
90. This evidence had therefore already been excluded prior to preparing the so called Second Report.
91. The fact that General Sibiya was appointed as the co-ordinator for the cross-border co-operation between the South African and Zimbabwean Police Services was excluded in the second report as there was nothing untoward in this and in no way implicated General Sibiya in the unlawful rendition of Zimbabwean nationals. It must have been contemplated that such co-operation was premised upon the fact that suspects arrested would only be sent to Zimbabwe after following due process to secure their extradition.
92. **Paragraph 3.2.1.24.2** states that I said that one of the reasons for drafting the second Report was additional statements were obtained and because the analysis of General Dramat's cellular phone records had been obtained. Werksmans noted that certain portions in the statements had been removed in the second report, which have been dealt with fully by me above. I have explained above, and I explained to Werksmans, that the fact that General Dramat's cellular phone records indicated that there had been a call to him

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when the Zimbabwean police entered the country in no way implicated him in the rendition. A number of additional statements were obtained which were analysed and indicated that General Dramat was not involved in, or aware of, the rendition.

93. In addition, as I have indicated, the existing evidence was re-evaluated by me and Mr Sesoko (who had been excluded from the investigation and was not involved when I prepared the First Report) in light of the additional evidence which made it readily apparent that the original recommendation made by me that General Dramat and General Sibiya be charged was not correct. The re-evaluation of the existing evidence was not considered as an important factor explaining the change of a second report by Werksmans.
94. **Paragraph 3.2.1.25** of the report states that pertinent information relating to the analysis of cellular phone records was removed. This was because it was pointed out to me by Mr Sesoko that I had treated assumptions as evidence in the First Report; in the Second Report the sms communication between General Sibiya and General Dramat was accorded its correct status, and appears in the analysis of evidence in the Second Report. As I have explained above, it was entirely usual for the two Generals to communicate, and they did so both before and after the period of the renditions in the normal course of their duties.
95. **Paragraph 5.1.1.5** of the report states the first report and the Second Report differs drastically with regard to the recommendations made. This is true. The reason why they differ is because of the additional evidence of General Sibiya's cellular phone records indicated that the witnesses from CI placing him at the scene and at the planning sessions were lying. The review of the existing evidence against General Dramat was purely circumstantial and in no way established a *prima facie* case against him.
96. It is crucial to note that the first report was done without the involvement of Mr Sesoko, who was the Acting National Head of Investigations at the time, and was a far more experienced investigator than I was. As Mr Sesoko explained to me when evaluating all of the evidence, the conclusions drawn by be upon

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which I had based my recommendations in the First Report were based on assumptions which I had drawn from circumstantial evidence. I erroneously treated assumptions as evidence. It must be borne in mind, that Advocate Mosing and Advocate Moeletsi had been guiding my investigation and had insisted that these facts constituted evidence.

97. This was ultimately recognised by the NPA, who withdrew the charges against General Sibiya and General Dramat. I believe that this was done as there was no *prima facie* evidence against either of them.
98. It must not be forgotten that I testified that the First Report was a prosecution driven report. I was forced to work with the prosecutors at the NPA and with Colonel Moukangwe and to exclude Mr Sesoko. In retrospect, I believe that this was to pressurise me into implicating both General Dramat and General Sibiya to achieve political ends. Mr Sesoko was excluded specifically because it was known that were he to have analysed the evidence, he would never have authorised the First Report which I was pressurised to sign by Advocate Mosing.
99. In **paragraph 5.1.1.9-10** of the report, Werksmans express the view that my reason for publishing the Second Report was not truthful because the additional information was not sufficient or material and thus, did not justify the preparation of a further report.
100. This is not true. It pays no regard to the fact that the expert analysis of General Sibiya's cellular phone records indicated that the witnesses implicating him were lying and that there was nothing but circumstantial evidence tying him to the rendition. It pays no regard to the fact that once Mr Sesoko was able to come on board, he, with his experience and expertise, was able to review the evidence without interference. His objective analysis of the existing evidence persuaded me that there was no *prima facie* evidence implicating General Dramat in the rendition.
101. **Paragraph 5.1.2.1** states that there are material discrepancies between the first and the second report. I have dealt with this fully above.



102. **Paragraph 5.1.3.2.1.3** states that I explained that analysis of the cellular phone records had been changed in the Second Report in order to summarise the report in a concise manner. This is not accurate. I indicated that in the First Report I had simply copied, and pasted the soft copies of the statements which I had on my computer. In the Second Report these statements were summarised.
103. This explanation had nothing whatsoever to do with the analysis of the cellular phone records. As I have explained, the analysis of the cellular phone records in the First Report was based on the records themselves having regard to the cellular phone tower that had transmitted the calls. At this stage the expert analysis of the cellular phone records had not been obtained. The analysis of the cellular phone records in the Second Report was thus, in accordance with the expert analysis which had by that stage been obtained.
104. The fact that the cellular phone records indicated that there had been a call between General Sibiya and Colonel Neethling was in direct contradiction to the evidence by the CI officers whom placed General Sibiya at the scene of the operation which Colonel Neethling was also involved in; had General Sibiya been there, there would have been no need for Colonel Neethling to have phoned him. General Sibiya's cellular phone records exonerated him and did not implicate him, as Werksmans appears to suggest.
105. The fact that there had been a call between General Sibiya and Colonel Neethling did not prove that this had anything to do with the rendition. Colonel Neethling did not confirm in his statement that he updated General Sibiya on the operation in the calls made by him to General Sibiya.
106. **Paragraph 5.1.3.2.1.5** states that I said that he was not responsible for the deletions. This is misleading as this statement was premised on the fact that there had been deletions from, what I assumed to be the Second Report, as stated by Werksmans.

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107. In fact, this was not true. There had not been deletions in order to remove all evidence implicating General Dramat and General Sibiya. The "evidence" against General Sibiya was not referred to in the second report as it was found not to be credible as the analysis of his cellular phone records disproved it. The "evidence" against General Dramat was not relied upon as it was purely circumstantial and speculative and did not establish any *prima facie* evidence against him in the rendition. Indeed, the only direct evidence involved General Dramat in the entry of the Zimbabwean Police into the country and in no way implicated him in the rendition.
108. There were thus rational and reasonable grounds for my amending my preliminary report that they be charged.
109. The first report was never changed or amended. The copy of the First Report sent to the NPA remained in its original form.
110. **Paragraph 5.1.3.2.3.5.2** states that it was evident from their discussion with me that Mr McBride had regard to the First Report. Page 6 of the transcript of the interview held on 23 April 2015 reflects that I said that Mr McBride "*might have*" had sight of the First Report because the previous day when we had consulted him, he had something in front of him, but I could not see what this was across the boardroom table. The word "*might have*" and is "*evident*" are different; more so because when something is evident it implies that I was sure about this, when it is clear that I was not. The use of the word "*evident*" by Werksmans was a patent misrepresentation.
111. **Paragraph 3.2.1.20** states Mr McBride's version is that the only input he had into the Second Report were only grammatical. I confirm this as the truth.
112. I would like to stress that in the docket in the criminal proceedings against us, there is a letter from Advocate Sello Maema ("**Advocate Maema**"), the Deputy Director of Public Prosecutions dated 2 November 2016 where it is stated that the matter could not proceed on 1 November 2016 as Mr July had disclosed his unwillingness to testify in the matter and that he was of the view that his evidence amounts to hearsay evidence. He further threatened to approach the

High Court to set aside his subpoena. A copy of this letter is attached marked "HIK/W 14".

113. I was also asked by the Chairman to check whether a senior counsel was used by IPID in any other disciplinary hearing apart from our disciplinary hearings. I did check this and could not find any other disciplinary hearing in which senior counsel was briefed to represent IPID.

114. The Chairman also requested that I provide the Commission with the Settlement Agreement concluded with the Department pursuant to which I was re-instated. I annex the settlement agreement hereto marked "HIK/W 15".

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 06 day of DECEMBER 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.

COMMISSIONER OF OATHS

FULL NAMES: MUBHULO MUREGI

DESIGNATION:

ESS

ADDRESS:

71 Sandeek Avenue
Pretoria



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ANNEXURE HIK/W 1.





**REPORT ON THE IPID INVESTIGATIONS REGARDING THE ILLEGAL RENDITIONS
OF ZIMBABWEAN NATIONALS**



MR R



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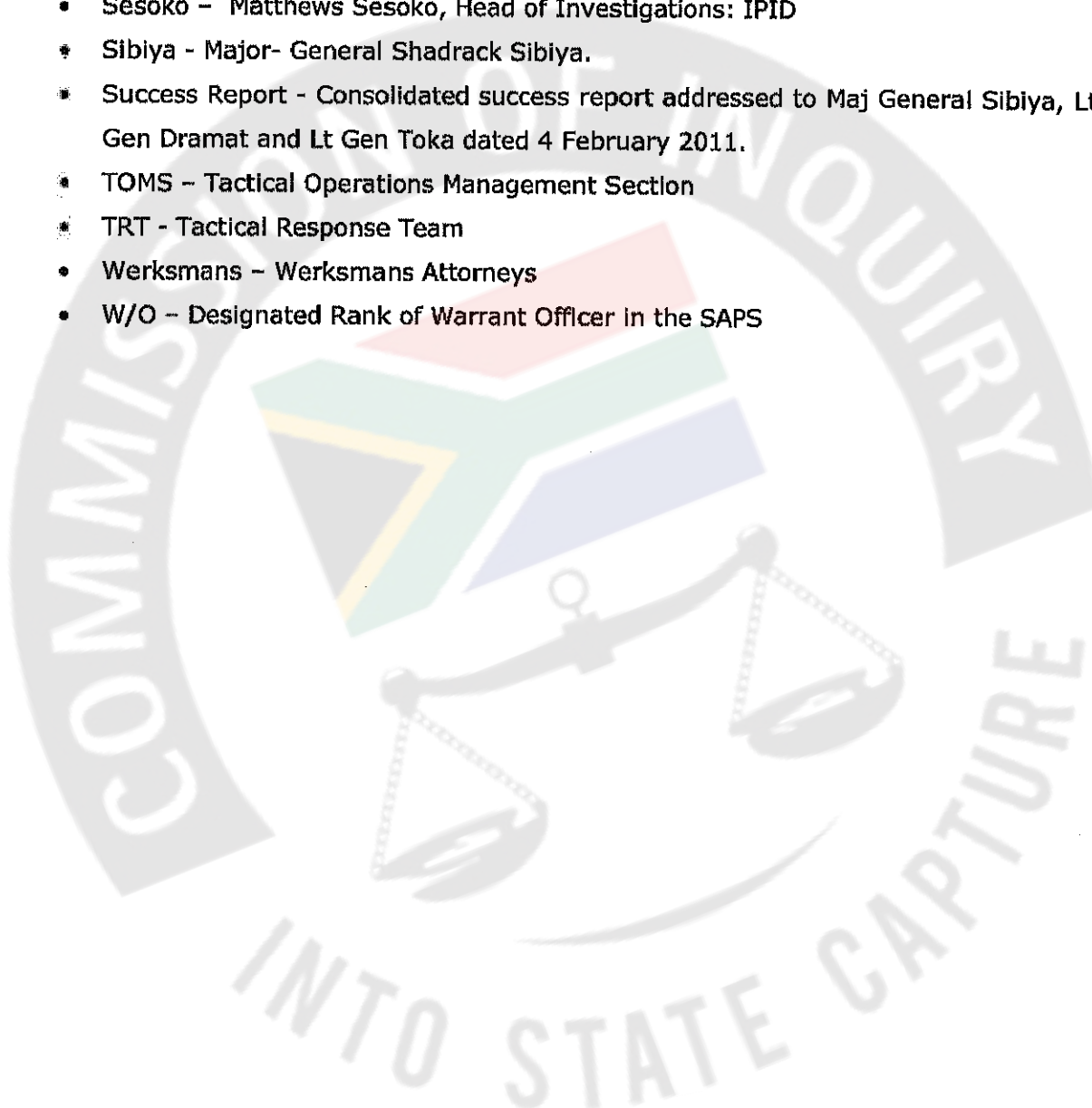
1 GLOSSARY OF TERMS

- 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

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- 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



#1 



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 Wilness 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.

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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 Weiradbrug 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.

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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 -

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- (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."



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;*

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- (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

HS [Signature]



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



2.4.1.3 we have had access to and have considered the documentation listed in annexure A attached hereto.

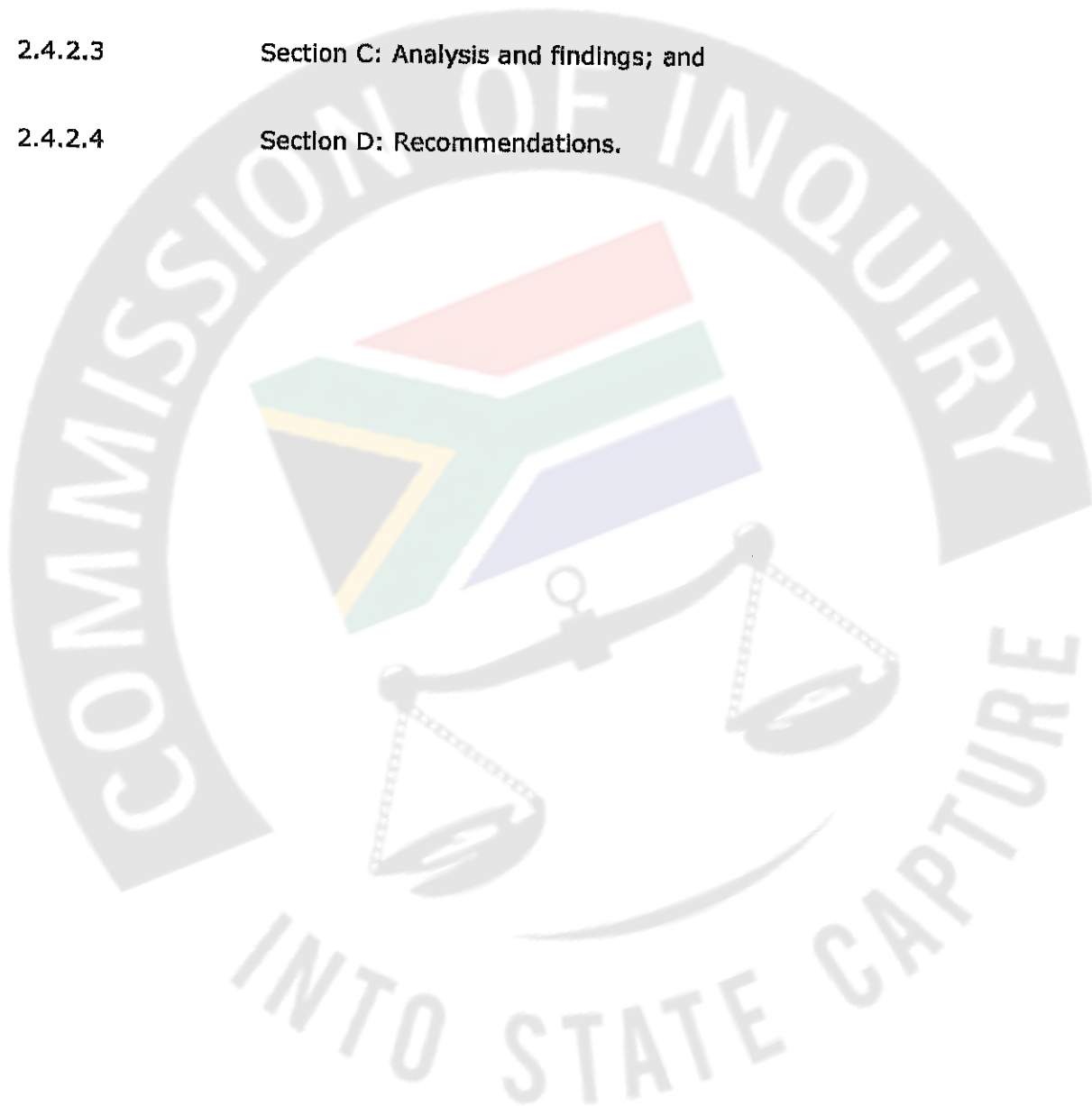
2.4.2 For ease of reference, we have divided the report into separate sections as follows-

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.



- 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, Hlatswayo 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



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:

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- 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



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.



- 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



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



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.

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- 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.



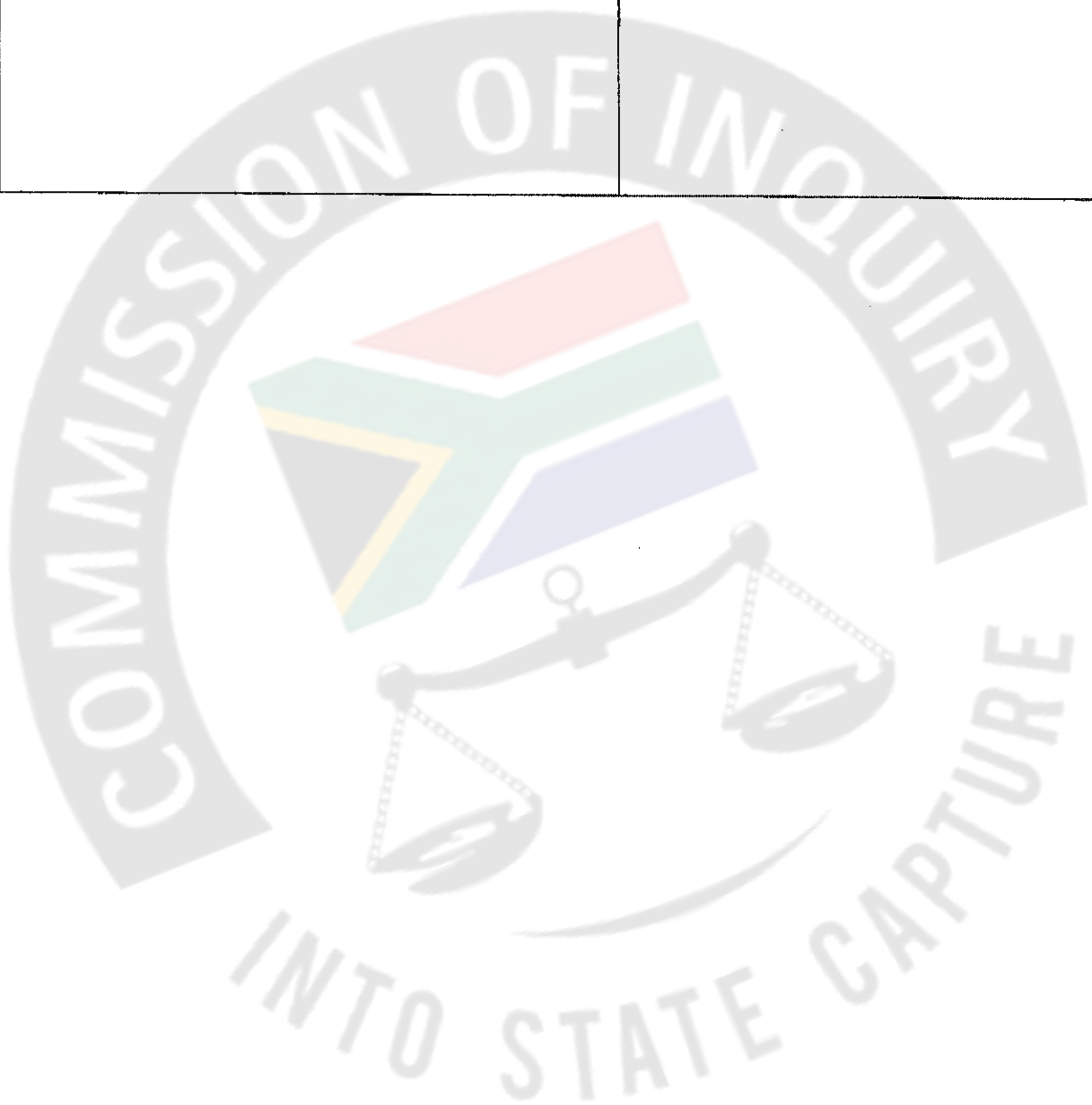


4 SECTION B: DELETION OF EVIDENCE FROM THE FIRST REPORT

IPID REPORT 1	IPID REPORT 2
<p data-bbox="199 495 868 577">Page 9 The statement of Ndanduleni Richard Madilonga</p> <p data-bbox="199 741 868 869">The statement of Madilonga states as follows in the relevant paragraphs :</p> <p data-bbox="199 891 868 1211"><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="199 1323 868 2033"><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="895 495 1533 577">Page 9: statement of Richard Ndanduleni Madilonga</p> <p data-bbox="895 595 1533 674">The following paragraphs are contained in this report in terms of Madilonga's statement:</p> <p data-bbox="895 741 1533 1061"><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="895 1084 1533 1162">(The paragraph that follows the above preceding paragraph has been deleted)</p> <p data-bbox="895 1184 1533 1599"><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="895 1666 1533 1789">The paragraph that begins with "He will state.." from the first report is deleted in the second report.</p>



he responded by saying that he is aware of the Zimbabwean police and he must let them come"





Page 21: para 5.2 reads

Success report dated 04/02/2011:

This report is addressed to Dramat,
Hlatshwayo and Toka


The relevant paragraph of the Success report reads as follows :

"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."

In page 20 para 5.2

In this report, this is what is deleted:

The paragraph beginning with *"The report bears reference 14/02/01 .."* from the first report is deleted In the second report.

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Page 21 para 5.3 Emails by Captain Maluleke:

The quoted email states the following :

"He sent emails 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 Dramat, Phumla, Zimbabwean Police and members of Crime Intelligence".

Page 21 para 5.3

The same paragraph in this report does not mention all the individuals to which the emails were sent to, it reads:

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..."

Page 22 Letter to Stakeholders dated 20/08/2012:

The said letter states thus:

"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.

Page 21: Letter to stakeholders

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 :

"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."

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Page 22: Documents Regarding Moyo's case.

Towards the end of this paragraph, Maluleke stated the following in a letter:

"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".

Page 21: Documents Regarding Moyo's case.

The letter referred to by Maluleke does not disclose to whom the letter was addressed: In this report, this is what is stated:

" 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

Page 23: Evidence in terms of Section 205 of CPA 51 of 1977

Evidence of Sibiya's cell records show that he communicates with officers involved including Dramat, the analysis is put thus:

"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."

Page 23: Evidence in terms of Section 205 of CPA 51 of 1977

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:

"Findings


Major General Sibiya was never at the crimes scenes or planning area as alleged by members of Crime Intelligence."



<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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to Major General Sibiya".	
<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>Analysis and Findings of Dramat's cell-phone records is recorded by Khuba as such:</p> <p>"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.</p>	<p>Khuba's findings on Dramat</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>"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</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>• "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".</p>

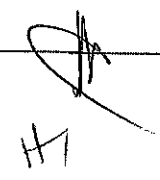
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<p><i>between Zimbabwean Police and General Dramat which took place on 05/11/2010 coincide with the date of the 4th of November 2010 which according to cell phone records, General Dramat was called at 20h56 by Lt Col Madilonga seeking permission to 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</p> <p>Khuba makes the following finding :</p> <p>"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</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 .</p> <p>Khuba makes the following finding in this regard:</p> <p>"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</p>	<p>•Congratulating the officers for the arrest of John Nyoni.</p> <p>Nothing is said about this issue</p>

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warned them not to tell anyone about it".	
<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 where 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 Sibiyia 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 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</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>	
<p>• The meeting held between IPID and Dramat on 2013/03/07</p> <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>	
<p>• Sibiya's presence at the scene</p> <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>	
<p>• The meeting with Zimbabwean Police for Cross-Border Crimes</p>	

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<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 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".</i></p>



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



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;



- 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.

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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, Sibiyi, 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.

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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



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 -



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



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



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?**

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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.



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

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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



Zimbabwean nationals. Mkasibe went further to state that Dramat warned them not to tell anyone about the operation. Mgwenya did not confirm Dramat's warning. It is recorded that Mgwenya 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.



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.



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.



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.



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



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.



- 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



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.



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



- 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

Sandile July
Werksmans Attorneys

ANNEXURE HIK/W 2.



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8 July/IPID
27.03.15

INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR SANDILE TOM - Associate, Werksmans

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26 March 2015Starting

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MR JULY:

Maybe we should just start by introducing ourselves, as to who is who. Today is 26 March 2015. My name is SANDILE JULY from WERKMANS, with KERRY BADAL, an Associate from WERKMANS, and SANDILE TOM is also an Associate from WERKMANS. And we have MR KHUBA from IPID. You can proceed, Mr Khuba.

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MR KHUBA:

Okay. At the time when I got the docket, I was given the responsibility to investigate cases of alleged assaults against MAJOR GENERAL SIBIYA. The tasking came as a result of the request by the then Chairperson of the

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8 July/LEID
27.03.15

INNOCENT KHUBA

Portfolio Committee, or Acting Chairperson,
MRS VAN WYK. I concentrated a lot on the
investigation of the assault cases, I did.
complete them, and sent them back to the DPP.

One of the cases the DPP had declined to
prosecute, but, after gathering evidence, I
recommended that MAJOR GENERAL SIBIYA be
charged for assault in one case which is a
BOKSBURG case. I cannot remember the case
number.

Then I started with the investigation of the
Rendition, which is DIEPSLOOT case 397/2012.

As I have indicated, the case was brought to
me by MR SESOKO, who indicated that I had to
investigate the case. Upon perusal of the
docket, I realised that investigation was
already done by members of Crime Intelligence.

One person who was quite prevalent in the
statements was COLONEL MOUKANGWE. There was
also another person by the name of KHOSA - I
don't remember the initial or the rank.

After perusal of the docket, I also realised
that a number of statements which were
obtained, were obtained from members of Crime
Intelligence, as well as witnesses who are

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ZIMBABWEAN Nationals. One of those witnesses,
or two of those witnesses I think were also
victims. I gathered a team - but I need to be
honest, because I never actively used this
team. I requested them to assist there and
there, where probably I had a number of people
to obtain statements from, but the majority of
statements were obtained by me. I was
informed that I needed to contact COLONEL
MOUKANGWE, by the then Acting Executive
Director, KOEKIE MBEKI, who indicated that it
would be prudent for me to carry out this
investigation with the assistance ...

MR JULY:

MR KHUBA:

What was KOEKIE's position at that time?
She was an Acting Executive Director after
FRANCOIS BEUKMAN resigned. She indicated that
I had to join hands with COLONEL MOUKANGWE,
but the instruction was when you join hands
with COLONEL MOUKANGWE, MOUKANGWE had to
remain a dark figure, he must not be seen.
The reason for that was not explained much,
but I gathered from him, when I met with him,
that was when he started to tell me the
reason. My first meeting with him was at
EMPEROR'S PALACE. When I met him, he

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explained how he conducted the investigation:
that he had to take statements at night, go to
the office, type them at night and go back to
the witnesses to get them to sign the
statements. So that part was explained to me 5
precisely. He also gave me the names of two
advocates. One is ADVOCATE MOSENG, the other
is ADVOCATE BILLY MOELETSI. I was also
provided with these advocates' contact numbers
- their cell numbers. I did contact them, but 10
at that time I had not yet started with the
actual investigation. I was also given the
contact numbers of the girlfriend of one of
the victims who was allegedly killed in
ZIMBABWE. I took the details. I was briefed 15
on the entire evidence available, as well as
the information that MOUKANGWE knew at that
time.
What I did after that, I started to look for
witnesses. I contacted the girlfriend of one 20
of the victims, and it was very difficult to
get hold of that person. Lastly, my guys got
hold of her at a particular shopping mall,
which I think is CHINA MALL in SOWETO. Then
they did an interview, but they did not take 25

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INNOCENT KHUBA

a statement on the basis that there was nothing materially different from what was taken.

Apart from that, I then started to map out the way in which I was going to oppose the case. 5
I did that alone. COLONEL MOUKANGWE was very, very supportive. I would inform him of what I was going to do, I would inform him of what I was thinking, and I need to indicate that I have never investigated a hard case like the 10
Rendition case. There was no cooperation from anyone. 10

I then contacted HOME AFFAIRS, because my point of departure was I needed to know from HOME AFFAIRS who are these people who are 15
missing. Are there any documents which are proclaimed to be authentic documents used to deport these people? It took me almost three months to secure an appointment to interview witnesses on HOME AFFAIRS' side. I spoke to, 20
I think, the Chief Director, MATTHEWS, and I was liaising with MATTHEWS through somebody called MR NDLOVU, who works in the office of MR MATTHEWS at HOME AFFAIRS. MR NDLOVU kept on giving me promises to say he will be able 25

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INNOCENT KHUBA

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to cooperate. One time I was really fed up. I had to write a letter, telling them that I was going to approach the DG, HOME AFFAIRS, that they were not cooperating. That was when I received a call from MR NDLOVU, saying that I could now meet with MR MATTHEWS. MATTHEWS said to me he was ready to cooperate, I could go and interview members of HOME AFFAIRS at the centre in SOWETO, as well as their head office.

I started by interviewing the head office staff. Then the following day I went to HOME AFFAIRS in SOWETO. On both occasions I was accompanied by COLONEL MOUKANGWE. We interviewed, we obtained statements, but the part we were clarifying during that process was the procedure. We tried to mirror what happened against the procedure that they explained to us. Then after that I decided to start investigation on the side of DPCI. At the time I received a call from COLONEL MALULEKE, who said to me that I was going to the wrong people, I must come to him directly and he will tell me what happened. So I told him: According to me, you are a suspect, and

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INNOCENT KHUBA

I don't deal with - a suspect for me ...

MR JULY:

That's COWBOY?

MR KHUBA:

Yes, COWBOY. I still remember creating a joke
with him. I said to him: A suspect to me is
not a starter, it's a dessert, so I will deal 5
with you later. We were laughing about it,
and he said: Okay, when you are ready, come
to me. But he kept on calling me, to say:
Come and meet me, I'm going to explain, I'm
the one who did everything. But I was trying 10
to avoid a situation where I would go to him,
he admits everything and then closes the case.
I wanted to know what really happened.
After that I went to DPCI. At the DPCI the
first thing was to request a meeting with 15
GENERAL DRAMAT. I asked for a meeting, I went
there with COLONEL MOUKANGWE. -For us he was
not a suspect at that time, we just approached
him as the General responsible for DPCI. We
spoke to him. I think there was one question 20
that MR MOUKANGWE asked - I can't remember,
but he was asking something in relation to
whether the ZIMBABWEAN Police were ever in his
office or ever came to visit him. Something
like that. He stopped a bit - he did not 25

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INNOCENT KHUBA

answer straight away, he waited and then he said: No, I don't remember meeting with the ZIMBABWEAN Police. Okay, that was fine. When we met, we indicated to him that we wanted some information, because we heard that he did some disciplinary. I'm going to cut and go to the core. 5

MR JULY:

No, no, I would appreciate that you say as much as you can.

(DISCUSSIONS REGARDING LUNCH ARRANGEMENTS) 10

MR KHUBA:

Then we requested certain documents. He said to me he can provide those documents if the request is made in writing. I still remember it took me less than thirty minutes to send an email to him, because I was using 3G. After we left, we went to a certain place - a restaurant. I sent an email with the request, to say we wanted - and of the things I listed, I included documents relating to the internal investigation, including the statements and all those types of things. I also requested the terms of reference of TOMS, which was formed to deal with issues like ATM bombings, and all those types of things. 15 20

After I sent the request, I was told that I 25

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27.03.16.

INNOCENT KHUBA

would have to deal with COLONEL BASI. Then I
made an arrangement. I spoke with BASI over
the phone, but the documents took some time.
It might have taken nearly a month to get the
stuff. I kept on calling, and I was told that 5
I would have to deal with BRIGADIER KHADRA(?).
I phoned BRIGADIER KHADRA, and BRIGADIER
KHADRA referred me back to COLONEL BASI.
Finally I got the documents. When I got those
documents, I sat down and perused them. I 10
read each and every statement of the internal
investigation, even though it was not an
original. I never took anything away. I put
the file completely the way it was inside my
docket. What I realised, when I was reading 15
the statements of everyone, I realised that
they were saying the investigation was
conducted properly and everything was in
order. There was one name of a person working
at the border gate by the name of MADILONGA. 20
This person had a statement which was signed,
but it was not commissioned. With all other
statements I realised that there was some
level of corroboration when it came to the
story. He could not corroborate other people 25

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INNOCENT KHUBA

in material facts, because his role was separate. But he indicated that everything was done according to the letter, and there was nothing wrong about his role. But when I looked at it, there was something I was not happy about when I cast my ... 5

MR JULY:

This is MADILONGA?

MR KHUBA:

MADILONGA, yes. So I took the statement, I went home and I gave him a call. I kind of indicated as if I was joking to him, and I said: Baba, I have your statement, I'm on the investigation team on Rendition, and I'm going to be coming with a warrant of arrest because you are lying. It was just as if it was normal talk. I said: I have a challenge with your statement, and I kind of really showed where I have challenges. Then he said to me: Come, my brother, we'll tell you what happened. 10 15

The following day I drove there straight away and met with him. That was when he explained to me what happened, from A to Z. After obtaining his statement, because the way I investigate cases, once I get a statement I put it down, analyse it and I check trends 20 25

#17 R

5 July/1970
27.03.15

INNOCENT KHUBA

that can be followed in terms of the
information provided by the witness. So I
identified a number of things and then started
to look back. I went to HOME AFFAIRS -
because he gave me a specific date. He said: 5
I still remember, the ZIMBABWEAN Police left
the day before the ZIMBABWEAN Nationals were
transported across the border. In terms of
the DPCI record it gave me an indication that
they were transported out on the 8th, and when 10
I checked the records of the Police Station at
ORLANDO, they indicated that MALULEKE booked
them on the 8th. I realised the day before
would be the 7th. He told me that on that
particular day they left between 5:00 and 15
6:00. So I stretched the mark, and I
requested records of people who crossed the
border within the space of four hours. They
drew the record for me, and even that record,
I'm telling you, incubated for a long time 20
before I could get it. When I got it, I went
back to MADILONGA and said: Check the names
here, which names are quite familiar. Then he
showed the name: this one NGCUBE, this one,
this one, this one, this one, I think are the 25

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27.03.15

INNOCENT KHUBA

guys who crossed. I said: Because you could
not remember when they came in, I requested
HOME AFFAIRS to give me the record that could
show me the day when these people came into
the country. That record was confirmed. So 5
I realised that they came around the 4th.
When I got that record of when these people
came in, and they came on this particular day,
I went to DPCI. I went to DPCI and started at
the security pound, looking for registers of 10
the old time(?). There I hit a snag, I
couldn't get anything, because I wanted to see
whether they were (indistinct). But I decided
to interview one of the people who was working
there, or was working for TOMS. It was 15
COLONEL NEETHLING. Then he gave me the
information, to say the person who was
supervising MALULEKE was LEONIE VERSTER. I
spoke to LEONIE VERSTER, and said: Can I come
and have an interview with you? When we 20
started, she kind of really indicated: Who
are you investigating? I said: We are
investigating MALULEKE. She was quick to say:
MALULEKE is like this and like that, he never
respects - he was not even reporting to me, he 25

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27.03.15

INNOCENT KHUBA

would speak to the bosses directly or speak to SIBIYA directly, he is a person who does not respect the chain of command. What I did from there - she told me: If you check the success reports, I went there and I spoke to a person by the name of COLONEL MABUYELA, to say: Can you give me the file of success reports? That is when I uncovered the success reports directed to GENERAL DRAMAT, GENERAL LEBEYA, GENERAL HLATSHWAYO ...

MR JULY:

What is the success report?

MR KHUBA:

The success report is a report that will tell you what operation was done in a successful way, so that the people who carried out that operation can be appreciated, or can use the record for their own performance evaluation. That is a success report. Now, I studied that success report in detail. There were almost three that I got. If I remember well, one was talking about or indicated the deportation or the arrest of witness NDEYA and others in relation to the murder of ZIMBABWEAN Police in ZIMBABWE.

Point number 1, which seems to be a universal point in the number of the success reports,

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INNOCENT KHUBA

said the ZIMBABWEAN police came and met with
GENERAL DRAMAT on the 5th, and requested
assistance. Then the other point says
MALULEKE was appointed. When I looked at that
I started to have an issue, to say: Let me 5
investigate this issue further. The lady by
the name of LEONIE had already also indicated
- because I said: I want to get the laptop of
MALULEKE and the phones. She indicated that
she would contact them and find out where the 10
laptop was. I realised, when she gave me the
feedback, she said the laptop - she gave me
the number, because the person she was talking
to from SCM at the DPCI indicated that the
laptop's serial number was this, but it was 15
about to be destroyed. For me it was
something urgent and I could not even apply
for a search warrant, because I did not know
the location. Because that laptop was
surrendered to the State, I had to request it 20
from MABUYELA. MABUYELA tasked somebody by
the name of WARRANT OFFICER DANIE, and that
person gave me that laptop. I took the laptop
and maintained the chain of evidence from that
part, and then handed it over to a forensic 25

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INNOCENT KHURA

company called PRECISION FORENSICS. I could
not use SAPS, because when I checked the
experts of SAPS they were all housed in the
DPCI. So for me I realised that I could not
give DPCI a request to investigate themselves, 5
I had to go outside.
Then they extracted things from the laptop.
I found that the same success reports were
generated from that laptop. I checked the
trail of those success reports, in terms of 10
how they were despatched. I would presume
they were generated by MALULEKE because that
laptop was MALULEKE's. After they were
generated, they were emailed to a lady, a
Warrant Officer by the name of MAPYATLA. 15
WARRANT OFFICER MAPYATLA received the stuff,
but we could not take her computer to see
where it was taken to. But also in the laptop.
we discovered photos of the operation. We
discovered emails sent to the Police Officers 20
in ZIMBABWE, asking them how they travelled.
The date and everything of the email coincided
with the date of the operation, to show that
the ZIMBABWEAN Police were there, because if
you send an email on the 6th, when people have 25

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27.03.15

INNOCENT KHUBA

left on the 5th, it really shows that.

I gathered all this information, and I was
updating COLONEL MOUKANGWE on a regular basis.
Sometimes I would meet, sometimes I would fax
the documents so that he could see. At that 5
moment I started to build up a report, and I
need to indicate why I had to draft the
report, because as a person who had been an
investigator for some time, I realised that if
you do your report, probably after the 10
completion of the investigation you are not
going to include all the facts. You need to
do it in a progressive way, so that when you
get stuff you update, you update and you
update. That's why, if you check my report, 15
some statements you will find take the entire
page. Because I wanted the person who would
take the decision to have an understanding of
what it is that is in that statement. I was
doing that on a regular basis when I got to. 20
the statements.

After I got that information, I regularly
shared it with the two advocates. And I want
to tell you, they were puzzled, because they
never thought the case would take that twist. 25

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27.03.15

INNOCENT KHUBA

So I continued to investigate and I continued to investigate. I was not really getting any cooperation or assistance for such matter, from the Department, because I think the Executive Director, Acting, also resigned, and there was no Executive Director. I had to see how to finish. At one time - and I still have that email - I received an email to say: You are coming to PRETORIA, you will pay with your own money, and you will sleep in a hotel using your own money. I even indicated to the person - to my Executive Director: If you are saying that, it's fine, as long as you give me my chance I will pay for it, and I will continue to do this case. Then after that part of the success reports, one of the success reports was indicating members of the TRT were involved in the operation of arresting DUBE and MR NYONI. I decided: Let me check. At that time I did not know where these people were ...

MR JULY:

You said TRT?

MR KHUBA:

TRT members from JOHANNESBURG Central. Because it indicated the list of names, of people who helped, to say: We were assisted

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27.03.15

INNOCENT KHURA

by these people, thank you very much for assisting us. That success report I think was also aimed at being seen by their commanders, so that they could give them an incentive or something.

Now, after that I decided to go and interview them. That is where my team played a major role, because I was dealing with almost ten to fifteen people. I sat down with my team, I briefed them, and I said: When you go there, I want you to cover this part, this part and this part, I don't want you just to take a statement, so you need to ask these questions. Whatever follow up questions you ask is up to you, but cover this ground for me. We went there and did an investigation. They said: That happened, we were congratulated, we went there and transported these people. So I heard that part. There were three people who were also mentioned from the CRIME INTELLIGENCE CENTRE. I went to meet with them - I requested permission from COLONEL NTENTE(?), and immediately I arrived there, after I was given permission, I saw the pictures I had extracted from the computer.

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INNOCENT KHUBA

They were on the walls - the picture of them standing with the ZIMBABWEAN Police, hugging them, or something like that. I started the interview. The lead guy on the operation - because when GORDON DUBE was arrested, DPCI 5 tasked CRIME INTELLIGENCE to go and search for these people. They went and searched for them. They tasked their informers, and their informers managed to get these people. I realised that one of the informers had the 10 same surname as the victim. It seems they used the relatives to get these people. I interviewed them. The lead guy was the one who gave me a problem. The lead guy is also from the same ethnic group as MALULEKE - I 15 knew then that I was going to climb a mountain. Every time I was interviewing him, and I think the interview took almost four hours, when the interview started to heat up he said he was suffering from a migraine, he 20 had a headache. I decided: No, I'm going to leave you, I will come tomorrow. When I was leaving, he said: No, sit down. We ended up completing his statement, but the statement did not shed light like other people's 25

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27.03.15

INNOCENT KHUBA

statements.

After I dealt with him, I went to MOKASINA(?),
who said: No, we did the operation, and after
we dealt with the operation we went to DPCI's
office and GENERAL DRAMAT came with MACKINTOSH 5
POLELA from House No. 1 to House No. 3. So
the set up, when I went there to check, I
found was exactly like that. There is House
No. 1, there is House No. 3, and House No. 1
is where DRAMAT was housed. The other thing 10
that he alleged in his statement was to say
that GENERAL DRAMAT came and congratulated
them, to say: Job well done, but please don't
tell anyone.

There was another lady by the name of MRS 15
MAGOBO, who was also part of the operation.
When I asked her, she said: Yes, I heard that
GENERAL DRAMAT came, but I was out, I had
already gone to the shop. When I came back,
people just told me: You missed it, the 20
General was addressing us. Another one by the
name of MOGWENYA said: No, the General came
and addressed us, and said: Congratulations
for good work, but he did not mention that he
said: Don't tell anyone. Now MOKASINA's 25

[Handwritten signature]

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INNOCENT KHUBA

statement was a little bit detailed. I wanted to know, because if a person goes into that detail, I said: How do you know GENERAL DRAMAT? He said: We were together during UMKHONTO WE SIZWE - but in SOUTH AFRICA they were together. He even described him, to say that GENERAL DRAMAT was wearing a red tie. And the day I interviewed him, he was wearing a red tie. I don't know whether he changes it or doesn't change it, but he said he was wearing a red tie. I wanted to get the point that he knows GENERAL DRAMAT. 5 10

After that, when I had taken all the statements, I even went to the houses of the TRT members. Because even though I extracted things from the computer, I had to get - because they said they had these copies of their photos at their houses. I had to go and collect those so that I could compare whether there was any material difference between these two things, and I found they were the same by finding it inside the docket. 15 20

After I had done that part, in terms of the taking of the statements, it was time for me to obtain a warning statement. I met with 25

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INNOCENT KHUBA

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ADVOCATE MOSENG. We decided to say we are going to draft questions, because after we approached him, he said: No, he can answer - but he needed that in writing. We decided to draft questions for him. In fact, before that he agreed to meet with us, without question. But there was a leak in the SUNDAY TIMES that there was this case, and there is MADILONGA saying one, two and three. As an investigator I was worried, and I then phoned ADVOCATE MOSENG, I then phoned my partner and I then phoned MR SESOKO. MR SESOKO was not my supervisor or my superior, he was just acting in the post, and during the investigation KOEKIE MBEKI gave me a clear instruction to say: Don't involve MR SESOKO in anything. She said: Deal with this thing on your own, and you don't involve MR SESOKO. I requested MR SESOKO: Let's go. He said to me: KHUBA, you already told me that the boss says I must not go, so I can't go. I said: Okay, it's fine. We drafted the questions for GENERAL DRAMAT, and that was after a leak, when he decided he just wanted the questions in writing. I don't know, but I think he was

refused
questions
did not
wanted
writing
he put
in
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27.03.15

INNOCENT KHURA

disappointed that the information was leaked.

I requested my former Executive Director, KOEKIE MBEKI, to say: I'm requesting that my entire team be subjected to a polygraph test, because I was not happy about it. I even requested that if it was not done, I requested to be recused from the investigation, that I didn't want to deal with it. She called me into her office and she said: If you do not continue with the investigation I'm going to charge you for insubordination, you need to do it. Then she said: We cannot request a private company - because I indicated that the people who did the forensic investigation of the laptop were ready to do the polygraph tests for free. Then she said: No, you involve me, and I will handle that. But then she did not. I continued with the investigation, but I decided that I was not going to keep the original docket with me. I took the docket to ADVOCATE MOSENG and I took a file which was not completely updated. It had some statements, but I requested COLONEL MOUKANGWE to have his own file, so that if it was stolen or something happened, then we

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INNOCENT KHUBA

would have backup.

After we had sent the warning statement, I
received a lot of correspondence from the
lawyers of GENERAL DRAMAT, who were dealing
with me directly. Firstly, they requested me
not to arrest him, and also they sent
something which - they even said to me that
the questions were very wide or vague, or
something. They responded, and the first
response which I received was basically his
political profile. So there was nothing
relating to the questions on the
investigation. I had to indicate to them:
No, no, I want to get a response to the
questions. They responded to the questions,
and when I looked at the questions - there
were some where he responded to the questions
but with others he was saying this issue was
classified and it was not something he could
talk about. I said: Okay, that's fine.
Because I wanted a situation where he could
say something, even if it was to say: I don't
want to say anything. It was sufficient for
me. I filed his statement. I do not
remember, but it seems as if the statement -

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27.03.15

INNOCENT KHUBA

and I'm not actually quite sure, but I will go and check the records - was sent shortly after I sent the docket to MOSENG. I'm not really sure of that, but I would need to verify my facts.

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During that time I also interviewed the main suspect, which is LIEUTENANT COLONEL MALULEKE. By that time he was a Lieutenant Colonel. The investigation I conducted around him was simply the issue of his promotion, firstly, to say that after the Rendition he became a Lieutenant Colonel. I requested the file of his appointment, because some people said he did not have STD 10, and that position needed a STD 10. So I requested the file, and all the correspondence was sent to BRIGADIER VERMAAK.

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MR JULY:

So before Lieutenant Colonel he was what?

MR KHUBA:

He was a Captain. The first part I was worried about was his promotion, to say was he not promoted on the basis of that. Now, I did an investigation on that, and they said they did not have the file, things were not in order. I have all the correspondence, which I put in the file - in the docket - to show

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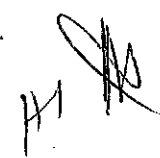
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INNOCENT KHUBA

that I communicated with VERMAAK about certain issues, but I could not get assistance. I also got the AVL's. I did the 205's in terms of the cellphone records of DRAMAT, of SIBIYA, of MALULEKE and all those types of things, 5 because their internal investigation had only the cellphone records of SIBIYA, NEETHLING and MALULEKE. Those cellphone records covered a very short space of time.

MR JULY: Who conducted their interviews? 10

MR KHUBA: It was WARRANT OFFICER MATLAMA. I also interviewed him, and obtained his statements. I had a problem with the way the internal investigation was conducted, but there was nothing I could do, because internal 15 investigation is an internal investigation. It seems as if this person was clear, and that I deduced from the info note to the Minister in response to the question of COPE about Rendition, because GENERAL DRAMAT sent a 20 report explaining what happened, to say that these people were really deported, but they were deported as illegal immigrants. They were firstly suspected of ATM bombing. So I also investigated that part of it, that's why 25



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INNOCENT KHURA

I wanted the mandate of TOMS. My challenge was that if you arrest people, suspecting them of ATM bombing, and after that you clear them and find that they were not involved, what would make you drive over 400 kilometres to BEIT BRIDGE to drop off a person, whereas there is a holding facility of HOME AFFAIRS, where you could drop these people. That was a challenge for me. So I investigated that, and I even checked the mandate of TOMS. I even checked the resources, I even checked the amount which was injected there, even though I could not come to a particular amount that I could really qualify. But in terms of claims I could check how much they spent. My problem was that they spent a lot just to take a person to BEIT BRIDGE, and I had a challenge with that.

In terms of that investigation of TOMS and what they did, and the vehicles they used, it came out exactly that these vehicles were at a particular area. You would see that they were doing an operation. If the witnesses were saying that: Around 8 o'clock they came and arrested us at DIEPSLOOT, you would locate

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INNOCENT KHUBA

those cars around DIEPSLOOT. So I took the
AVL's, which are the records of TRACKER in
terms of the movement of cars, and we
developed a way to check where these vehicles
were from Google Map. We corresponded that 5
with the telephone records of these people.
The reason why I had to connect it to the
telephone records is because DPCI did not give
me the record of who was driving these
vehicles. They said those log books are not 10
there, so now I could not marry a car to a
driver.

MR JULY:

But you could locate it?

MR KHUBA:

Yes, I could marry a car to a cellphone
record. That's what I did, because the part 15
of the car and an individual in terms of the
log book could not be done. So I have the
record that said particular cars were there,
and I also have the telephone records that
shows particular investigators or members of 20
DPCI were there. That part was done, and
MALULEKE was there, MAKOE was there, LEBURU
was there - they normally use his name as
LEBURU, but it is CONSTABLE RADEBE. I was
able to connect all those people. 25

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INNOCENT KHUBA

MR JULY:

And NKOSI.

MR KHUBA:

Yes, Yes. After the part where I connected them, because the first part of the issue of where these guys were detained, I did not have that information. Most especially for JOHN NYONI as well as GORDON DUBE. I did not have that information, so what I did, I sent my investigators to all the police stations in GAUTENG. We drew up a web, working from the centre, going outside. We could not work from outside coming in, because if you are in PRETORIA, you may detain a person at PRETORIA CENTRAL, at NOORD Police Station before you could go to GARANKUWA. We tried to work our way out. I think we had done about four, five or seven police stations and we arrived at SILVERTON and found the names of people who were deported by the name of JOHN NYONI and DUBE. But when we went and drew the docket, we found that these were not the correct people. Something came to me to say: Can it be a coincidence where you have people with the same name, around the same dates, detained around SILVERTON? I took the docket involving these people, and what I found was very funny.

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INNOCENT KHUBA

I found that this docket was a fraud docket,
and this fraud docket - these people, it's a
JOHN NYONI who exists, it's not the JOHN NYONI
who had been deported. This DUBE gave a
statement to say: We were called to say let's 5
go to a particular place, I met another person
called JOHN NYONI, and we were going to get
some jewellery and the police came and
arrested me. From that part it seems as if it
was worked out and planned to create a decoy. 10
What I did, I said okay - because when we
realised that these were not the correct
people, I sent them to go and start to look.
Then they found NYONI at NOORD Police Station.
But what was funny, this NYONI was booked in 15
for fraud - the same case which was a decoy at
SILVERTON. When he was booked out, he was
booked out in the name of "extradition". The
booking in was fraud, the booking out was
extradition. All these things took place 20
around the 26th, 27th and 28th, when these
people were arrested and deported.
So that fraud case I investigated - the decoy
fraud. It led me to BENONI, and I also got a
cheque which was stolen there. I looked for 25

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INNOCENT KHUBA

these people, but they were running away, they did not want to talk to me, because they were afraid, so they disappeared. I found that that case was finally withdrawn, it never continued. I kept it - and it's part and parcel of defeating, but the person who investigated the case was at BOSTERVAL(?), next to NELSPRUIT. I don't know the name, but I sent my investigator there. We interviewed her, we took her statement, but she said she can't remember. Now it will be up to the prosecutor to decide, but we could not really get much on that. 5 10

Again, on the issue of DUBE, DUBE was facing five charges. When he was arrested by these people of the CRIME INTELLIGENCE CENTRE, he was taken to WIERDABRUG. They found him with a firearm - the same firearm allegedly used in killing a ZIMBABWEAN policeman in ZIMBABWE. Because they arrested him in DIEPSLOOT, they had to register a case in DIEPSLOOT, but they transferred him to WIERDABRUG. When he was transferred to WIERDABRUG, WIERDABRUG had almost four cases they were investigating against him, including murder. The murder one 15 20 25

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INNOCENT KHUBA

- I read that docket, and that docket was very strong. What happened, was when they took him there, because he was shot during the arrest, and he was shot by a guy by the name of MOGWENYA. They took him that side, and he was attending court. It seems as if the wound, where the bullet hit the flesh - because I think it was on the hip or on the bum, or somewhere there, so he went for treatment at the hospital, and he was going for a check up I think for the cleaning of the wound. Then they booked him at prison, because he was supposed to appear. But on the 28th MALULEKE requested the investigating officer of the WIERDABRUG cases to go and book out DUBE and take him to DPCI, which the investigator at WIERDABRUG did. We went and got the record from PRETORIA CENTRAL PRISON. It shows that he was booked out by MERWE something, I think it is. I can't remember the name of the investigator, but he was booked out. When he was booked out, he was never returned. So I had to go to the investigator and say: Where did you take this person? He said: I took him to SILVERTON. He took him on the 28th,

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INNOCENT KHURA

and on the 28th the register of NOQRD Police Station shows that they booked out NYONI - the real NYONI now - to BEIT BRIDGE for extradition. It makes sense to me that that day they transported two people. I went and requested copies of all the dockets involving DUBE at WIERDABRUG Station. That is where I found a lot of incriminating evidence against MALULEKE, because MALULEKE was saying - because they wanted to close their docket. In the system you can't close the docket unless it's been disposed of in a rightful way, which means closed as undetected, either convicted, acquitted or the suspect has died, or something. There are a number of ways in which you can close the docket, but none of these happened. So what he did, he wrote a letter to them, and said: Please be informed that I took this person to ZIMBABWE and he was sentenced to life imprisonment. All these statements were in all these dockets, so he was really implicating himself. What I did then, was to say: Let me make copies of all these dockets. Fortunately I was a step ahead. In everything I was a step ahead.

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INNOCENT KHUBA

still remember my investigators were complaining that if they found something now and they gave me the information, I would say: You don't sleep, you go and get it. They ended up saying: Khuba, we won't give you the information now, we'll give you the information in the morning, because when we give it to you late, then you send us when we are supposed to rest. What happened, is I requested them to go and make copies. They made copies of each and every docket against DUBE. Then when I went to go and meet with the advocate, the advocate said: We are also supposed to get the originals. The following day when I went, all the originals were stolen at WIERDABRUG. I could not get anything. But that was not a problem because I had already taken everything, so it was an issue of having the originals. Even the issue of the books - I never made a copy at the Police Station of the books - these occurrence books. I took the originals. I still have the originals in the safe.

So we did everything; we did an investigation, but we were let down by the

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27.03.15

INNOCENT KHUBA

person who was doing the cellphone records.
The person who was doing the cellphone records
could not come to us in time with a report.
He sent a draft report, which was handwritten
somewhere, and I wanted the original report. 5
That report could not tell us much. We wanted
information that would help us know whether
SIBIYA was in DIEPSLOOT on the dates and times
which the witnesses were alluding to.
ADVOCATE MOSENG said to me - and that was 10
after I had done the report - the report with
which COLONEL MOUKANGWE was also in agreement,
this is the report, signed. But in this
report the outstanding investigation, which
was not yet done - and this is an 15
investigation where, according to ADVOCATE
MOSENG he said: We can't wait, because this
case has been dragging. Because I was trying
205's, I was trying to invoke the Criminal
Procedure Act to get - it was very, very 20
difficult. By that time I did not even have
the statement of COLONEL VERSTER, because when
COLONEL VERSTER learnt that DRAMAT was taken
as a suspect at that time, she decided not to
cooperate. She decided not to cooperate, and 25

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27.03.15

INNOCENT KHUBA

even now I have not yet got her statement. I sent out questions which relate to not only MAIULEKE, because by that time I had these success reports, so I had to add GENERAL DRAMAT, to say: You signed these success reports, and what was the method of delivery, since GENERAL LEBEYA, who was almost on the same level as DRAMAT, acknowledged that he received the report, which talks about ZIMBABWEAN Nationals, and the same people who GENERAL DRAMAT said were deported as illegal immigrants. But the report says they were wanted in connection with - so I put those questions to her, and she never came back to me. After I stored her number, she appeared on WhatsApp, so I sent her a number of WhatsApp. I even said to her: If you feel you are a suspect, can I come and take your warning statement and warn you accordingly? She just said: my son has been involved in an accident, I can't talk to you, I'm going through a hard time now. But her resistance started before the accident - two months before the accident, and I kept on. I think I spent another month thinking that probably

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INNOCENT KHUBA

this person had been discharged from hospital
- the same resistance. Lately, when I was
requested by ADVOCATE BALOVI to say: We still
need to get this signed success report, can't
she give us a statement, I went back and 5
contacted her, and she did not pick up the
call.

Then I requested - in fact I sent a message
and she said she was in a meeting. I made a
call, and she did not answer. Then I went to 10
MCBRIDE and said: Mr McBride, I have this
problem, can you talk to her? I don't know
whether I gave him the number - no, I didn't
give him the number. He just said: What is
the name? I gave him the name, and he said he 15
would contact. Even today I haven't yet
- received anything from them. But he made a
call in my presence; he was talking to
somebody. He said: My investigator is
struggling, he wants this person, but this 20
person is not showing up, what is the problem?
They talked and talked, but I do not know the
response that that person gave. Even now I
haven't yet received any statement or
cooperation from that person, and that person 25

H1 R

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INNOCENT KHUBA

is no longer working for SAPS, they are working for PROTICON(?).

The report was done without - if I remember well, the statement of DRAMAT was not included in the report, but I'm not sure whether I had already received it or not received it. The statement of SIBIYA was not there, even though in the questions we sent to him I was assisted by MOSENG. ADVOCATE MOSENG knew very well that that information was still outstanding. I had to send the report, because I received a request from MOSENG that I needed to send the docket. I sent the docket and I sent the report, but I'm not sure whether that report was sent via email or if it was sent as being part and parcel of the docket. That I cannot remember. I requested IT to download all the emails so that I could check whether I sent it, but since yesterday I have been hitting a wall.

There was a request which was made on the analysis of MADILONGA's statement, and I want to say why I requested the analysis. It was done around September - I think McBRIDE started last year, in 2014. In September 2013

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INNOCENT KHUBA

I sent a statement analysis to an expert. I
want to say why I sent the statement analysis.
The operation for the arrest of these
ZIMBABWEAN Nationals took place in three
phases, but MADILONGA said he assisted in the 5
first phase. That was when he made a call to
GENERAL DRAMAT, and GENERAL DRAMAT said: Let
these people in, they are coming to see me.
He confirmed with his superior, and the
superior gave a statement and also confirmed 10
what he was saying. This statement of
MADILONGA I had to take for a statement
analysis, because my understanding is that if
you help me positively today, and I'm looking
for the same help, there is a possibility that 15
I can come back to you again. Because he said
he helped them to cross the border, and he
told me to say the police - because he was a
senior that side. But I do not know if he did
not help them because he was no longer working 20
there, because after that he was transferred.
But that part I'm going to check clearly. I
think I checked it, but I'm not quite sure,
I'm going to clarify it again. I had the
challenge that he did not help them in the 25

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INNOCENT KHUBA

second and the third phases, he helped them in the first phase..

I took his statement for analysis by the expert, and said: Can you check this statement, because I need to go and obtain a second statement from him? I want a watertight case, so do a statement analysis. They did a statement analysis, and they said: There is something that is problematic with the statement. I said: Why? They said some of the things it seems in a way he will be telling the truth, but in another way he is trying to protect himself. The truth will be put in such a way that as long as I'm not pushing the blame. So it's marked with red lines, waddah-waddah, I know these type of things. I said: Okay; it's fine. I went back to him. When I went back to him, I clarified: Why did these people not come back to you and request assistance in the second instance? He said he did not know but he only helped them once. But his statement is corroborated by 205's - you know the material or technical evidence, that this thing happened. You know, it's corroborated. I

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5 July/IFPD
27.03.15

INNOCENT KHURA

said: Have you ever spoken to DRAMAT at any time except for that day? He said: No, I don't speak with seniors, that's why even at that time I had to phone my seniors first. For me I had to do that part. If you check 5 the docket, it has two statements of one person. I clarified that part. Then the report was done, and the report was sent to MOSENG together with the docket.

But I was still waiting. I was still waiting 10 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 Secretary of Police was not part of the 15 report, and the other statement I cannot remember, but it was quite a substantial number of statements. The report ended at page 35; if I'm not mistaken, and the nice part is when I do a report, normally when I do 20 major amendments to a report I do not save that report at all, I save them differently. So if I do like this rendition, it is Rendition 1, and Rendition 2 - the same report. Because when I do major updates I. 25

Still waiting

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27.03.15

INNOCENT KHUBA

save them separately so that I can cover myself to say: The old report looks like this, the one that I updated looks like this. And the computer tells me exactly when last I updated it, and when you compare the two you can see what updates there were. So the report was sent. Let's come to the crucial part. 5

MR JULY:

Why don't we ...

MR KHUBA:

... eat? I think you would want energy. 10

THE INTERVIEW ADJOURNS FOR LUNCH

THE INTERVIEW RESUMES

MR JULY:

We are back now.

MR KHUBA:

Before we closed, I indicated that I was coming to the important part. 15

MR JULY:

Yes.

MR KHUBA:

The important part was when all this new evidence had been gathered I then sent an email, and the email is dated 28 February 2014. In that email I requested ADVOCATE 20
MOSENG, to say: There is statement that has been brought by SIBIYA, and I would want to attach it. In other words, I wanted to attach the evidence that I had, and everything, because he now had the original docket. Then 25

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27.03.15

INNOCENT KHUBA

in his response he said to me: The docket is
no longer with me, the docket is in GAUTENG,
try to make an effort to get the docket or to
go and attach the evidence that you have. I
said: Okay, it's fine.. By that time I had 5
already started with the process of updating,
because when I get stuff I update. I was
updating the report in terms of the new stuff
that had arrived.

I think on 3 March McBRIDE started, if I'm not 10
mistaken. I just heard that, but the fact
that he was the successful I knew long before
that, but I think it was around the end of
February when the DA made some noise that:
This person is not suitable. 15

MR JULY:

Yes, I remember. He started late.

MR KHUBA:

I was not sure that he was going to come,
because the way was so rife, I never thought
it would go through Parliament. But I later
heard that he was starting with us, and on the 20
3rd I think he came and started with us. What
happened, is I did not see him when he
started, because I went back to LIMPOPO. I
received a call - and I cannot remember when -
from MR SESOKO, to say that the Executive 25

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27.03.15

INNOCENT KHUBA

Director would want to see or get an update on all the high-profile cases.

MR JULY:

Maybe before you proceed, all that you wanted to do with this new information was to make it part of the report?

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MR KHUBA:

Yes.

MR JULY:

It was not like that information would have influenced you to change the report?

MR KHUBA:

To tell you that straight, by that time I had not yet - you see, there is a difference between updating new evidence in terms of saying what its impact is, and also the issue of ...

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MR JULY:

... of saying how does it get you to a conclusion.

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MR KHUBA:

Yes, for me I was typing stuff in. I had not yet started with the issue of saying: What is the value of this, what is not the value of this, how does it impact and how does it not impact. I want to say that it was material to the investigation, but I had not yet started with it. Because I got a request to say the ED wanted to get an update on the case, what I did, if I'm not mistaken, I emailed the report to MR SESOKO to give the report to

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27.03.15

INNOCENT KHUBA

ROBERT McBRIDE, for his attention, so that when I met with him he would be well aware of the facts of the case. That report I gave him was not a signed report, but it was a copy - it might be the old one that I sent to the DPP. I can't remember which one, but it was a report about the Rendition. Of course it had an update in terms of ...

MR JULY:

But it was not the one you handed over to MOSENG?

MR KHUBA:

Mmm?

MR JULY:

I'm saying when you say it was not the signed one, the one that you handed over to MOSENG was signed?

MR KHUBA:

It was signed. I signed that one. It was not the signed one, it was a soft copy, and that's why I had to email it. But I cannot really say how many statements were updated, because by that time I had not yet finalised them, because I had the challenge that I spent most of the time without being in my office, and my office was not meeting the strategic objectives. Even though I was running up and down with the issue of investigations, I was still expected to meet the strategic targets

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27.03.15

INNOCENT KHUBA

as per the strategic plan. So when I went back I concentrated a lot on doing office work, checking cases, and making progress.

I sent that report. After I sent that report I got a call to say that the ED would want to meet with me. Then after that I went to

PRETORIA. I can't remember the date, and I need to verify the date with my diary or log book. I went to PRETORIA and met with the ED.

When I met with the ED there was no-one else, it was me and him. That was my first meeting with him. The first day I met with him,

because I met him again for a second time, but the first day what I did was to explain to him

exactly what I explained to him in terms of the processes from the beginning to the end:

how I received this case, how I investigated this case, and what happened, until the

conclusion. There was nothing about anything except for me to brief him. After I briefed

him, he said: Okay, we are going to meet again. I left his office and went through to

MR SESOKO. At that time MR SESOKO was at home, somewhere in KEMPTON PARK, because we

were supposed to have an investigator's

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27.03.15

INNOCENT KHUBA

meeting - what do they call it - a meeting between the Secretariat and IPID around BOKSBURG. What do you call this, is it called BIRCHWOOD hotel.

MR JULY:

Oh, yes, on the EAST RAND? 5

MR KHUBA:

Yes, on the EAST RAND.

MR JULY:

I know about that.

MR KHUBA:

I was staying at CITI LODGE, just before the airport, when you come from PRETORIA. I was staying around that side. I firstly went to MR SESOKO and I briefed him. I said: Mr SESOKO, I had a meeting with the boss, and the boss wanted me to brief him about the case. After I indicated to MR SESOKO what happened, I went back to the hotel and the following day we had to meet. I think it was a continuation of the briefing, because MR SESOKO did not call me. At that time I did not even have his number. I received a call from MR SESOKO to say that we are going to meeting again. After leaving the hotel I went straight to PRETORIA to meet with McBRIDE, as well as the... 10 15 20

MR JULY:

This is now the following day?

MR KHUBA:

I think it's the following day. I met with 25

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INNOCENT KHUBA

McBRIDE and I met with SESOKO. There was a third person, and I think that person would be very critical to interview. There was a third person, a white guy, who took over from me when I was doing the investigation of CATO MANOR, because after I was like threatened, I was told the police as well as SSA came and did security and what-what, and when they checked the numbers and everything they said: Your life is in danger, leave now. So they brought him in. Then that person, when we met - we were meeting with him because he had to give a briefing on CATO MANOR. I had to continue with the briefing on this one of Rendition, because the previous day's briefing I'm telling was me just flowing with what happened. Now, on the second day if I'm not mistaken he started with MR GLEN ANGUS of MPUMALANGA. He gave a briefing in terms of what happened at CATO MANOR. His briefing did not really take very long, but it was also detailed. He gave an indication of: This is the stage, this is what happened, waddah-waddah. Of course there were some questions that were asked, but after he briefed then it

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did not take it as
significant. I
the report to sign 192

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INNOCENT KHUBA

came back to me.

We started to look into - I think he asked questions in terms of the investigation itself. I think one of his main concerns was basically to say: Are you people not supposed to be independent on the issue of robbing MOUKANGWE, to say are you not supposed to be independent, so there is this person of Crime Intelligence. But I also indicated: You know, I am just telling you this, because I feel that you are head of the department now, and many people do not know about MR MOUKANGWE because he is a person who was operating from - he was not supposed to be known. I think to answer that one, that's why he did not sign the report, even though he had an input in the report. But for me that was a person who was supposed to stay in a wallet. So I involved him, but it was not some person who was really supposed to be known as such. I explained to him what happened, even though we are supposed to be independent. But I got an instruction. I got an instruction from the former Acting Executive Director that I needed to cooperate and work with him. From that part I briefed

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INNOCENT KHUBA

him on the new evidence, to say: We got this new evidence, and this is the evidence, without explaining further to say what its impact was on the case, even though MR SESOKO and him were sometimes asking: What is the value of this evidence, I indicated it. For example, when we talked about SIBIYA, I said: With SIBIYA there is corroboration that points to the fact that he knew about this, he was involved. Somebody said he also assaulted. But I told them that the new evidence was really kind of bringing a spin off to the first evidence, on the basis that we cannot really connect him in terms of him being there. Because the tower shows him being in PRETORIA at the exact time when the witness says he was in DIEPSLOOT.

I also got another number for MAJOR GENERAL SIBIYA, which I got through the underground. I checked the number and all the numbers did not show that they were there - that they were at DIEPSLOOT. But I had a discussion, because whenever I have a challenge like this I tend to talk to people, to say: Is it possible that a person can be there, and can use a

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INNOCENT KHUBA

phone and leave it with someone? That possibility you can't rule out, more especially when you deal with the police. And this brings up the part that when I was consulting with ADVOCATE BALOYI - because I consulted, because he said to me he would want to prosecute SIBIYA, even though at first he said he did not want to prosecute DRAMAT, he just wanted to prosecute - he said: I've checked this document, I think I want to prosecute. So he had a challenge to say: These records, where you are saying SIBIYA was not there, when I check the expert who did this report it does not say much. I indicated to him that even the cellphone record indicated the tower, and this tower is right at SUNNYSIDE, it's right in PRETORIA, whereas in DIEPSLOOT the towers are 1, 2 and 3. Because I had the 205 of these other people and it shows the towers. Those towers are not related to the towers that coordinate the course of SIBIYA. When I took the two, my challenge was, was it possible that SIBIYA could have left the phone with somebody and generated some calls, and if he knew that the

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INNOCENT KHUBA

operation was illegal, there was a possibility. But my question was: How possible is it that I can win this case, most especially if you present this. The defence attorney is going to tear you apart, to say: 5

How can you make a point out of assumptions? I had a challenge with that. So I indicated, to say: My biggest problem is that this part of the evidence here is really a challenge. 10

MR JULY:

But isn't his presence there corroborated by a number of witnesses?

MR KHUBA:

Yes, it's corroborated by a number of witnesses. That's why I want to tell you, more especially when you deal with reports, 15 because SESOKO is more of a legal person than myself. I'm an investigator, and I know the law relating to investigations. He had been a prosecutor for a long time, so he was able to raise questions about certain things, to 20 say: What about this, what about that, what about that? We had a discussion, but most of the discussion did not take place in the presence of the ED. But the ED raised a very crucial question, to say: Where was crime 25

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INNOCENT KHUBA

committed. I think he asked that, he said:

Where was crime committed? Who are these people who are involved. He said he is not a legal person, but he just wanted to know where a crime was committed. So even though we did

not answer this question there, when we went to check the report, because we had to come up with a final one, based on the new evidence. Either way I had to include the new evidence.

There were a number of questions he asked, but I cannot remember the detail of this and that, and that. What I remember is he said: When was the crime committed, was it committed when these people were searched for, when these people were arrested - there were a lot of issues that we debated regarding that issues, because we had to check where crime was ...

MR JULY:

Is the crime not that here the crime starts - you can have a number of activities ...

MR KHUBA:

... that complete the crime?

MR JULY:

... that complete the crime. Assault would be an activity which is committed on those people who were assaulted, but when something happens with my knowledge, I know that there are

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police orders and operations taking place, and I am informed because of my position. Whether I am physically there or not, it doesn't matter.

MR KHUBA:

I think to tell you, Mr July, I understand 5
that precisely, that when you are operating at
that level I would not really expect that MR
JULY would go and physically do something, you
would probably send your foot soldiers to do
that. The warning statement that I took from 10
GENERAL SIBIYA was somehow a little bit
contradictory to his first statement to
Parliament. Because I have a piece of that
statement. In that statement he acted as if
he did not know, but I went further to say - 15
because in the questions, the questions to
GENERAL SIBIYA were well framed, because I
decided to be spot on. I think if I'm not
mistaken the first question was where I said:
The ZIMBABWEAN Police came on the 4th and had 20
a meeting with GENERAL DRAMAT on the 5th.
Your cell phone coordinates show that on the
5th you were in PRETORIA with GENERAL DRAMAT,
what were you doing. I asked that. The
response was: It's my head office, I go there 25

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to do whatever work. The second question was:
Did you meet with the ZIMBABWEAN Police in
relation to witnesses NDEYA, DUBE and so on?
Then he said no. He managed to answer some of
the questions, but when I checked the
statement that was submitted to Parliament,
that statement was providing information to
say: I do not know anything. Those names you
mentioned I don't know. I confronted --
because when I took it, and I'm talking
about the layman assessment, the layman
assessment was to say he sent SMSs to DRAMAT
and LEBEYA, and these SMSs were in a very
categorical form. He would send maybe four,
two and two. Wherever you see DRAMAT you see
LEBEYA, DRAMAT you see LEBEYA, DRAMAT you see
LEBEYA.

MR JULY:

The only thing in that instance is that DRAMAT
did not respond, according to the report ...

MR KHUBA:

He never responded to SMSs that were sent by
MALULEKE, he never responded to SMSs which
were sent by SIBIYA. Most especially because
what I did was to take the operation and put
a milestone to it. Because the witness would
say: At around 8 o'clock we were being locked

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up at ORLANDO. So I take from 7:30 to 8:30 as a milestone and go and view the telephone records to see what the activities were of these people. Around that time I found that DRAMAT received a message from MALULEKE.

MR JULY:

So if there would have been any contradiction, it would have been a contradiction between the tower information and the statement by the witnesses, saying that they saw him.

MR KHUBA:

Mmm.

MR JULY:

Right? It would be the physical presence when the tower points to him being in PRETORIA, but his knowledge of the operation is corroborated by the SMSs which were not responded to by DRAMAT.

MR KHUBA:

Yes. Let me touch on that part, because everything was super in terms of this coordination, to say there were messages. I went further, to go to LEBEYA, and I said: General Lebeya, can you give me a statement? Firstly, you wrote on the success report and you acknowledged - just to acknowledge the report. Now, how did you receive the report? He answered in his statement, and he said he

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INNOCENT KHUBA

received the success report. So in his statement he did not only attach that success report, he also attached other success reports to show the success report used to come to him. That was the first part. When you look at the cellphone record where SIBIYA sends this, LEBEYA said to me that SIBIYA had an automated ...

MR JULY:

Yes, I heard that part.

MR KHUBA:

He had an automated email/SMS dispatch.

MR JULY:

In actual fact it was as per regulations(?).

MR KHUBA:

Now, for me that part - and I've got it in my warning statement, where I said: I can be a junior and send a message, but if you and her are my seniors and I send an SMS to both of you, it may not really be about joking things, it means I am reporting something. So now I had a problem with those things, and I said: You sent SMSs to LEBEYA and LEBEYA agreed to say you sent progress on a case, so tell me the operation other than the ZIMBABWEAN Nationals which you people were working on o this particular day at this particular time. That is when he said: They might have informed me, but I'm not involved

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INNOCENT KHUBA

in issues of operation. I have that in his statement. So he is not saying that he knows exactly - he's not divorcing himself from the same stuff. .

MR JULY:

He does not want to expressly deny it, in the event that you come up with concrete evidence. 5

MR KHUBA:

Yes, so that part I managed to clarify. But my biggest challenge was the issue of the (?), and when we were discussion it especially with MR SESOKO, I said: How then do we deal with a person who they said was there, who says he was not there? And the other statement of witnesses was saying that they saw a figure in a car, and when they ask MAKOE, MAKOE said it was GENERAL SIBIYA. So there you have hearsay evidence which cannot be admissible until MAKOE qualifies it. Now MAKOE is a suspect who never wanted to cooperate with me. 10 15

From that premise we decided that the issue of SIBIYA was going to be a challenge. But I want to say to you that what you are raising is very genuine, to say: But you would not expect this person to operate on that level. I think at any given time if a person comes with very compelling evidence, it's something 20 25

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INNOCENT KHUBA

that can persuade you, but if you are discussing like I was discussing with SESOKO, for me, with his prosecutorial background I said no, I think - and I really believed him to say: Hey, this person was not there. Do you see now? It gave me a sigh of relief when I heard that this analysis had to go back, because ADVOCATE BALOYI said he would get a new expert to look at the evidence and explain. Because there were also some call divers - I don't know if they were diverted, or whatever, but the expert we used could not unlock that part. It just indicated the person was not there - these towers are in PRETORIA, and waddah-waddah. We went and worked on the report. That report went to and fro ...

MR JULY:

Who is "we"?

MR KHUBA:

Me and MR SESOKO. We worked on that report. There was no time, to tell you an honest fact, where the ED touched or typed. He made input on the report, he never typed. I'm the one who typed. Even SESOKO, because he's very slow. I'm very fast because of my experience in doing this. I was seated on a chair at his

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INNOCENT KHUBA

desk, working on the report when we were doing
all these types of alignments, based on the
new evidence to say this and this. But it was
not only the new evidence, and I think I
really need to be clear on that, because it
was also the evaluation of evidence. Many
times, when I do investigation, I like it when
a neutral person comes and looks into the case
and advises, because sometimes you are
overshadowed by facts, most especially with
some breakthroughs, if you find a breakthrough
you would want it to be like a trophy on every
recommendation that you make. Whereas you can
find that those breakthroughs only affect one
person. So I wanted MR SESOKO also to say:
Mr SESOKO, you need to re-advise with your
prosecutorial background. Then we took the
first draft to the Executive Director and he
read it. I think that day I went home. I
went home, and he read the report. We might
have corrected it ...

MR JULY:

Now that's the first draft of the amended
original?

MR KHUBA:

Yes. So this first draft was going to and
fro. We sent it to the ED to say: This is

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INNOCENT KHUBA

the draft, check if you are happy with whatever we have done. But I also need to be very clear on this thing. MCBRIDE never said to us: You need to clear this person or not clear them. I think he would have been committing a serious mistake, because by then we were not really -- he would just make input on certain things. I still remember the other thing, that when we discussed with MR SESOKO the recommendation on the three ...

MR JULY:

How was he making those inputs? Let's say you give him the draft, he takes the draft, he goes and reads it -- was he making notes?

MR KHUBA:

Yes, he was making notes. Sometimes he used to make notes, and the majority of those were spelling -- he used to check little spelling mistakes, the spelling and how things are presented. But most especially on the spelling, he was very strict on that. When we were doing this report, there was also an issue about the assault. I remember I still discussed this assault with MR SESOKO. I said to him: Look, Mr SESOKO, this issue of assault, really can we look into it and check whether we can advance this assault as a

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INNOCENT KHUBA

recommendation? The challenge there was, if you look at the issue of the assault, there is corroboration that there was assault. But you have two groups: You have CRIME INTELLIGENCE and then you have members of TOMS. Members of TOMS were saying: We saw MALULEKE and this person assaulting the victims. Then you will have the victims saying: I was assaulted by a guy called MALULEKE and by a guy called - so you have that strong corroboration. Our biggest challenge was that we went to other TOMS members who gave material evidence regarding the Rendition. I still remember one guy's name, which is SELEPE, from TOMS. After I cornered him and said: I have this car, and it went there, he decided to say: I'm the one who helped MALULEKE to transport the people to BEIT BRIDGE. I had to find out whether there was assault. He said: No, I didn't see any assault. Other people were saying they did not see any assault. Now, we are looking at this issue of assault, and one of the guys they arrested, who alleged they were assaulted, was not taken to BEIT BRIDGE, they released him before they could take others via

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INNOCENT KHUBA

- it's not NABOOMSPRUIT. What is that place
next to PRETORIA, where they were changing
cars. So this person was released, and when
he was released I could not get the medical
record. Because for others I understood they
could not really go to hospital because the
one was released. This one was released
immediately, so I could not get a medical
record to see if he was assaulted. But
assault is not always assault GBH, you can
have assault common. That part we had a
challenge with. But also we had the challenge
that if you charge one, these other members of
CRIME INTELLIGENCE who are witnesses against
members of TOMS, to say that they assaulted
them, you still have to charge with omission,
most especially if you check the decision in
the case of *State v Witnesses*, because they
were duty bound to act, and they did not.
And they were committing an unlawful act.

MR JULY:

MR KHUBA:

Yes, so now you have two groups, where
materially they are suspects, but they are
also witnesses again - all this type of thing.
That was the challenged, and when we told the
ED about that, he said: But a crime has been

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INNOCENT KHUBA

committed, why can't you just charge them. I think on this one let's wait for DPP, and DPP will probably give us direction to say what it is that needs to be done. Because the challenge was that with these people you can't deal with one and leave the other, you need to deal with them both. 5

Our understanding was, we realised that even though there was no medical record, there was still common assault happening. On the issue of theft of money we had a challenge where other people did not see it. When we interviewed I was very strict to find out, because I wanted to prove the elements of that crime, and I realised they were not really coming forward to say: Really, money was stolen. So we did not recommend any theft charges. 10

When we were done, I think when the corrections were done, it finally went to MR SESOKO. 20

MR JULY:

Before the finalisation of that, you don't have documentation that shows the exchange and the notes from McBRIDE?

MR KHUBA:

I'm telling you I would have had 25

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INNOCENT KHUBA

documentation, because when these things were changed, they were brought back to us - not to me, because SESOKO would have been the one. I regarded SESOKO as more of a senior because of his experience, even though we were the same rank. On most of the things I would phone him and request advice. I still remember when the last document was signed, or the last report, most of the documents were destroyed. The reason why they were destroyed, was because there was that leak that had happened in the past. I still remember the ED said: When we sign this thing, let's put it in the safe, because we do not want to be blamed tomorrow to say we are the one who leaked the report. But after that I never participated in the issue of taking the docket. After I put my signature on that report ...

The second report?

MR JULY:

MR KHUBA:

Yes. I gave them everything, and I do not know how they delivered it to the NDPP, because we went and fetched the docket - and that's the part that I omitted - we went and fetched the docket, because the docket was

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INNOCENT KHUBA

already in JOBURG. When we fetched the docket, I went with MR ANGUS and I said to MR ANGUS: Will you accompany me, I'm going there? We went there and found ADVOCATE VAN ZYL at the DPP, JOHANNESBURG. When we found ADVOCATE VAN ZYL, we indicated that we have no evidence and we would want to take the docket. Then he looked at the report - not my report, the report of MOSENG, because from my report MOSENG had already recommended. Because when you send to the other DPP, you also summarise, as the person who is guiding the investigation. So he gave I think two or three pages. Then we discussed it with ADVOCATE VAN ZYL to say: This docket will come back to you. We took the docket. ADVOCATE VAN ZYL, after some weeks - because if you check, the report was sound around April? The second report was signed around April.

MR JULY:

Yes, around March.

MR KHUBA:

The date of signature?

MR JULY:

Oh, the date of signature. On my one the signature is April. Everybody else signed in March. I'm not sure, there is no date.

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MR KHUBA:

SESOKO signed on the 18th.

It might be the same date that I signed, because when I signed it I left it in the office of SESOKO, and I gave everything. Because when I collected that docket from . 5 ADVOCATE VAN ZYL, I indicated that we would bring back the docket. Then, when we were done with everything, I requested to take back the docket. MR McBRIDE said: No, we will need to take this document back again to the 10 DPP. So I did not know what happened or what was done. I do not know whether the report was initialled on each and every page. It was not initialled?

No. 15

MR JULY:

MR KHUBA:

So I do not know whether in that report something was added or was taken away. I wouldn't be able to know.

MR JULY:

So this report, according to you, is the one which says at the end: 20

"Based on the available evidence the Independent Police Investigative Directorate recommends that no charges should be brought against Lieutenant General Dramat and Major General Sibiyi." 25

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INNOCENT KHUBA

MR KHUBA:

Yes.

MR JULY:

"It was clearly established that, there is no *"prima facie"* case against them, however, with regard to Colonel Maluleke there is a (?) case."

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This is the report?

MR KHUBA:

That is the report, yes. In terms of the recommendation I'm quite sure, because I signed that page. But the other pages I can only presume are in the same way as I left them.

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MR JULY:

We will go through this report, and I will show you where the problems and discrepancies are. Now let's start with where it ends, and take your one that you signed alone, the one that you signed alone also starts with the same wording:

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"Based on the available evidence, the Independent Police Investigative Directorate recommends that Lieutenant Dramat and Major Sibiya, Lieutenant Maluleke, Constable Radebe, Captain S Nkosi and Warrant Officer Makoe be charged criminally for kidnapping, defeating the ends of justice and assault

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INNOCENT KHUBA

and theft ..."

Right, let's go through it. Now, the one that you signed, which is the second one, leaves out CONSTABLE RADEBE - nothing is said about him; it leaves out CAPTAIN S NKOSI and it leaves out WARRANT OFFICER MAKOE. What is the reason for that? 5

MR KHUBA:

The reason, as I have explained, is when we analysed the evidence review, based on the new evidence that I had - and that was mostly relevant to SIBIYA, when we talk about the cellphone records - when we talk about MAKOE as well as NKOSI and LEBEYA and MALULEKE on the issue of assault as well as theft, I omitted it there, because when I discussed it with MR SESOKO, we looked at the way ... 10 15

MR JULY:

How you were going to prove that?

MR KHUBA:

Yes, how we were going to prove that, most especially when you deal with a case of the scale of beyond a reasonable doubt. It becomes very difficult. But because we understood that a recommendation is just a window into an investigation, we had no problem in sending that, to say: If the DPP have a different view, they can overturn it, 20 21

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and we're fine. I never had a challenge with that.

MR JULY:

Let's go to DRAMAT. My understanding is that where you said DRAMAT should be charged with defeating the ends justice, assault and theft, 5 let's say he is not found guilty - he is not going to be found guilty on all or some of those charges, but your recommendation was based on his knowledge of the operation, that these things don't just happen. For instance, 10 people were being taken from here illegally, so he knew about that. Right?

MR KHUBA:

Yes.

MR JULY:

Now we're saying because of that - because remember, there has never been evidence that 15 DRAMAT was ever found to be involved in operations.

MR KHUBA:

Yes, you're right.

MR JULY:

So we reached that conclusion knowing that that information that linked DRAMAT to 20 operations was not there.

MR KHUBA:

Mmm.

MR JULY:

Now you have SIBIYA. You try to compare SIBIYA and DRAMAT to say: We did find information which we considered to be 25

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contradictory in terms of SIBIYA's location, but who is aware of the operation, in the same way that DRAMAT is aware. What then makes us change our minds, because at the point when we were drafting this report, we knew that DRAMAT 5 was never involved in the actual kidnapping, was never involved in the actual assault, defeating the ends of justice - the operation he was involved in. But we said what we said because of his position as head of the 10 operation.

MR KHUBA:

Yes, that's true. That's true.

MR JULY:

How is it different from SIBIYA?

MR KHUBA:

After you have explained, there is no difference on the basis that that person is 15 operating only strategically. That's what I need to tell you. You would probably not expect even him, because I think the other part that made me - when I look at that, is the issue of his absence. Because when I was 20 investigating a case in BOKSBURG there was an allegation that he physically went there and kicked people. So for me I took him as people who are in a high position would want to be physically involved. When I looked into the 25

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INNOCENT KHUBA

records and realised that this person was not there, my question was how do I even sustain the question of assault when they allege that he assaulted someone? But probably the issue of kidnapping, because he was not supposed to be physically there, makes sense. But when we review that and look to the higher - you know, we normally put a higher scale when we deal with issues of recommendation to the DPP. I said: But if you look at the evidence against SIBIYA, these people have already shot themselves in the foot, to say on this particular time he was there, he was wearing this - and he was not there. Do you get what I'm saying? Most especially when I got the information that when I investigated him on the issue of the meeting, I placed him at SILVERTON where the meeting took place. You see, his physical presence would have been relevant on assault and theft.

MR JULY:

MR KHUBA:

MR JULY:

Mmm.

Let me show you also what seems to be problematic and where certain things were changed and the manner in which they were changed. Do we have an extra copy of this?

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MS BADAL:

No, but I can make one if you want.

MR JULY:

Yes, please make copies of this.

So I hear you when you say at the end you can testify about the actual conclusion, but what you can't testify about is whether the content and things were removed. We are only going to be able to talk about things that were removed or were not removed if we go through the document.

MR KHUBA:

But also, you need to understand that I have that report in my system. I emailed it to MR SESOKO, the same one. What I did not do, was to check whether it's the same, together with the one that I amended. But I really hope that it's the same. I'm not saying something wrong was done, no, but to the best of my ability, from what I can remember, I will be able to give you answers why there is a difference between the two.

THE INTERVIEW ADJOURNS

THE INTERVIEW RESUMES

MR JULY:

Let's continue.

MR KHUBA:

You are saying it's the one that talks about the success report dated 11/11/2013?

MR JULY:

Yes, paragraph 5.2:

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INNOCENT KHUBA

"Documentary evidence acquired from DPCI
offices."

MR KHUBA:

Yes, in this other report it says:

"The report bears reference number 260201,
and again addressed to Deputy National 5
Commissioner, DPCI. The person to whom
enquiries must be directed is Captain
Maluleke whereas the signatory is Colonel
PJ Selundu. Paragraph 1 of the report
states the Zimbabwean ... the office of 10
the Regional Commissioner regarding ..."

Okay, let me come to this one. It says:

"The report bears reference number
25/02/01 and again addressed to Deputy
National Commissioner DPCI. The person 15
to whom enquiries must be directed is
Captain Maluleke, whereas the signatory
is Colonel PJ Selundu. The report
further stated the arrest of Dumisani
Witness Vundla and Ndeya and Shepard 20
Chuma."

The part that is not there is the one that ...

MR JULY:

The part that is not there is the one which
refers to DRAMA'T.

MR KHUBA:

Yes. It says:

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INNOCENT KHUBA

"The Divisional Commissioner regarding
the Zimbabwean Nationals in hiding."

Yes.

MR JULY:

You see, that part has nothing to do with this
either.

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MR KHUBA:

I agree.

MR JULY:

It has nothing to do with the material
evidence that you received.

MR KHUBA:

Yes, I agree.

MR JULY:

Then on the same page, on the original one,
paragraph 53, which is the second page of the
second report.

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MR KHUBA:

Paragraph 53 or 5.3?

MR JULY:

It's paragraph 5.3, sorry.

MR KHUBA:

I see that.

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MR JULY:

Emails by CAPTAIN MALULEKE. On the original
it says:

"Emails by Captain Maluleke."

MR KHUBA:

Okay.

MR JULY:

On the original it says:

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"He sent emails circulating more than
twenty photos of both the suspects
arrested and the members involved in the
operation. The emails where (it's
supposed to say 'were') were sent to the

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INNOCENT KHUBA

PA of General Dramat, Phumela, Zimbabwean Police and members of Crime Intelligence. He also sent emails to the Zimbabwean Police trying to find out how they travelled back home."

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If you look at that paragraph all that is out except that he sent emails to ZIMBABWEAN Police to find out how they travelled.

Let me check.

MR KHUBA:

"He sent emails circulating more than twenty photos of both the suspects arrested and the members involved in the operation. He sent emails to Zimbabwean Police trying to find out how they travelled back home, and that he is still tracing the main suspects."

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I have that, yes.

MR JULY:

Then if you go to the next one, paragraph ...

MS BADAL:

Is it 5.5?

MR JULY:

Yes, 5.5. If you look at 5.5 ...

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MR KHUBA:

5.5?

MR JULY:

5.5 is the cellphone record of MAJOR GENERAL SIBIYA.

MR KHUBA:

Okay.

MR JULY:

It reads:

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"Upon perusal of the cellphone records, it was discovered that Major General Sibiya communicated with the officers who were involved with the operations, eg Captain MALULEKE, and sent more than twenty SMSs to Major General Dramat. However, Major General Dramat never responded to the SMSs.

The same automated SMSs were sent to Major General Lebeya (at that number). These SMSs were sent at various milestones of the operations."

But if you look at the report on page 23 ...

This one is not in terms of the analysis?

This one.

No, no, that's fine.

If you look at this one, at the same paragraph 5.5, page 23, this would be the changes. Do you see how it is typed there?

There it is in the blocks.

It's in the blocks, yes, and when it comes to the cellphone records of GENERAL SIBIYA, they are not there. That is left out.

Whereas here it is there.

Yes, it's left out, even (indistinct) is

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

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there, and then the cellphone record of
DRAMAT. But it doesn't say anything about the
cellphone records.

MR KHUBA:

You see when you say the cellphone records of
DRAMAT are not part of this, I still remember 5
when I was doing these blocks, I was trying to
kind of really give the evidence in a more
concise way, so that I could make the
information more readable. But the issue of
DRAMAT's number is not there, because I said: 10

"CELLPHONE RECORD OF LIEUTENANT GENERAL
DRAMAT

To verify whether he had interaction with
the Zimbabwean Authority regarding the
arrests of Zimbabwean Nationals. 15

The entire cellphone record of Lieutenant
General Dramat does not show any
interaction with the Zimbabwean
counterparts. However, the fact that
Zimbabwean police might have entered the 20
country is confirmed by photographs, but
there is no evidence that they were with
Lieutenant General Dramat. The photos
show them with members of the TRT,
Captain Maluleke and members of Crime 25

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Intelligence."

I get that part.

MR JULY:

Even the MALULEKE one, if you go to that same paragraph 5.5, if you go to the original ...

MR KHUBA:

Of 5.5?

MR JULY:

Yes. The original 5.5, if you turn to page 24 and read what is said about MALULEKE, and read what is said here, it says:

"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 SMSs at a very important milestone of the operation. However, General Dramat never responded to the SMSs which he received from Captain Maluleke. He also called a Zimbabwean number twice ..."

That thing is not here under MALULEKE.

MR KHUBA:

Under MALULEKE that is 5.5.

MR JULY:

Yes, on page 23. To test the version of the witness ...

MR KHUBA:

Oh yes, in terms of these blocks it's not there.

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27.03.15

INNOCENT KHUBA

MR JULY:

Yes, it's not there.

MR KHUBA:

Okay, I get you on that. I want to respond.

I just wonder if you are done with all the...

MR JULY:

Yes, we will deal with all of them. NEETHLING
does not appear here.

5

MR KHUBA:

Where?

MR JULY:

On the one ...

MR KHUBA:

His statement?

MR JULY:

On the cellphone, still in paragraph 5.5.

MR KHUBA:

Oh, NEETHLING is not there?

10

MR JULY:

Yes. He's not listed on this. But on page 24
of the original, the one that you sent earlier
on, NEETHLING's cellphone records are there:

"He is a police officer who was posted at
the border during the operation. He
assisted Captain Maluleke to cross the
border with the suspects. He contacted
Lieutenant General Dramat when he
welcomed the Zimbabwean police the first
time."

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MR KHUBA:

Are you talking about MADILONGA or NEETHLING?

MR JULY:

Sorry, sorry, I'm reading from MADILONGA now.

The cellphone records of NEETHLING:

"He was directly reporting to Major
General Sibiya."

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S July/12TD
27.03.15

INNOCENT KHUBA

MR KHUBA:

Yes, that is the first report.

MR JULY:

"He contacted General Sibiya telephonically and in his statement he stated that he believed he reported the operation to Major General Sibiya."

5

The new paragraph 5.5 here does not talk to this.

MR KHUBA:

Yes.

MR JULY:

So I'm saying even if we were to accept your version as being correct, that when you received this evidence about the location of SIBIYA, but everything that we have done so far has nothing to do with MAJOR GENERAL SIBIYA, and in addition to that his location, in order to prove the charges that you brought against him - except for theft and assault - you don't need his physical presence.

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MR KHUBA:

Mmm, that's fine.

MR JULY:

Then JENNIFER IRISH-QHOBOSHEANE - that evidence was not in your original report, right, and even DRAMAT and SIBIYA were not in your report. Also, the new one is different to this one. Before I proceed let's go to those dockets. Your statement you will find in the original starting on page 25. The

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27.03.15

INNOCENT KHUBA

other one starts at page 25 as well. It's you
- the first paragraph is the same, and in the
second paragraph then it starts changing.

MR KHUBA:

In the second paragraph?

MR JULY:

Yes, in actual fact it starts changing in the 5
second paragraph.

"Upon his perusal ..."

Do you see where it says "upon his perusal"?

MR KHUBA:

Mmm.

MR JULY:

Maybe before that I need to indicate - do you 10
see where it starts "on 13 November"?

MR KHUBA:

13 ...?

MR JULY:

13 November.

MR KHUBA:

Yes, I see it:

"On 13 November, a letter requesting an 15
interview ..."

MR JULY:

Yes, where it starts on 13 November, if you
look at that it ends where it says "incident".
Do you see where it says "incident" and there
is a sentence which starts: 20

"On 28 January 2013 ..."

MR KHUBA:

Yes, I see that.

MR JULY:

If you go to the next report, where the
paragraph ends ...

MR KHUBA:

It's page 26?

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6 July/TPD
27.03.15

INNOCENT KHUBA

MR JULY: Yes, page 26. It ends with "incident".
MR KHUBA: Okay, oh yes, I see it.
MR JULY: But look at where it then begins.

"On 15 February ..."

And it leaves out:

"On 28 January he was called by the former Executive Director, who gave him the following documents, stating that she had received them from the Secretary of Police ..."

All of that part is removed.

MR KHUBA:

It's removed.

MR JULY:

And then they start the paragraph:

"On 15 February ..."

MR KHUBA:

Okay, this paragraph on the 28th, it doesn't have the name of DRAMAT.

MR JULY:

It does.

MR KHUBA:

Where?

MR JULY:

It does. If you look at the second ...

MR KHUBA:

It doesn't.

MR JULY:

It doesn't, but what it says is:

"On 28 January he was called by the former Executive Director, who gave him the following documents, stating that she had received them from the Secretary of

21 1

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8 July/IPID
27.03.15

INNOCENT KHUBA

Police, report on illegal Renditions
dated 25/06/2012, accompanied by warrants
of detention for the following
individuals: Dumisani Witness Ndeya,
Shepard Chuma, Nelson Ndlovu and three 5
Notification of the Deportation of an
Illegal Foreigner for Nelson Ndlovu,
Shepard Chuma and Maghwawe Sibanda. The
documents are filed in the docket as per
A36. An enlarged copy of the death 10
certificate was made from a copy of the
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." 15

That whole part is removed.

MR KHUBA:

It's removed, okay. That is a point also that
I can explain.

MR JULY:

I think it's page 30 of the original report.
Do you see that part on page 30, where you 20
say:

"He held a meeting on 05/11/2010 with the
Zimbabwean police."

MR KHUBA:

Page 30 of the analysis?

MR JULY:

Yes.

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8 July/IPIB
27.03.15

INNOCENT KHUBA

MR KHUBA:

Okay.

"He held a meeting with the Zimbabwean police planning the operation. Success report dated ..."

5

Okay.

MR JULY:

That part is not included in this report.

MR KHUBA:

Is it not that it was put the other way round?

MR JULY:

No.

MR KHUBA:

It's completely out?

MR JULY:

Yes.

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MR KHUBA:

Which page can you guide me to?

MR JULY:

It's page 30. Then there is no analysis of any dates in the other document which starts on page 29. It says:

"The following findings were made:

15

Zimbabwean police ..."

MR KHUBA:

Yes, I see now. Page 30 and page 29 in the other one. Let me check the part that you say is not there. Under the new report what page is it?

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MR JULY:

It changes completely.

MR KHUBA:

Of course the picture, in terms of how the facts were put, changes because of the analysis of how we analysed the evidence. But I'm going to explain. If you look at the

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27.03.15

INNOCENT KHUBA

analysis, there are bullet points there.

MR JULY:

'Yes.'

MR KHUBA:

There is one that talks to the old report. It starts by giving the background on TOMS, then you have that bullet point where:

"The Zimbabwean police came into the country with the purpose of arresting wanted Zimbabwean Nationals and Lieutenant General Dramat directed that they be allowed to proceed since they..." 10

Here he says:

"The arrest of Dumisani Ndeya ..."

So he is no longer talking about GENERAL DRAMAT.

MR JULY:

"He held a meeting on 5 November 2010 with the Zimbabwean Police planning the operation." 15

That part is not here.

MR KHUBA:

Okay.

MR JULY:

"He received communication ..."

MR KHUBA:

My challenge, most especially when you look at the issue of the analysis, the analyses in the first report and the second report differ a lot, not only on what is there and what is not there, and also the style of presentation, but 20

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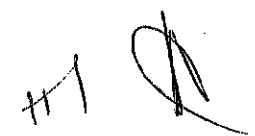
s July/IPID
27.03.15

INNOCENT KHUBA

I need to indicate that that issue regarding the call, if you check it is there, in terms of when you go deeper into the analysis, to say that even though GENERAL DRAMAT might have received the call, we do not know what the discussion was all about. Okay? 5

MR JULY:

Okay, let's go through it. It says the ZIMBABWEAN Police into the country, and it says they were coming to - you see, what you were doing here, you were analysing the statements made by people. They are there. 10
Then you seem to be accepting those documents, hence you came to the conclusion that there is a link. Right? But in this you leave out - that has been left out, as if the meeting has never happened, as if MADILONGA has never said what was said. Of course when you want to come to a conclusion, that you can do, but you needed to analyse it in this way that you did. 15
But now, because the conclusion is different, that analysis is no longer as if you now are not agreeing with the fact that there was a meeting on 5 November, as if MADILONGA never made that statement. Do you get what I'm saying? 20 25



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27.03.15

INNOCENT KHUBA

MR KHUBA:

Yes, there I'm just really going to explain on that part, because when we discussed the evidence and reviewed the evidence, we tried to weigh it, in terms of saying: If there is this evidence, what is the possibility in terms of this side and this side? Whereas in the first report it was a clear-cut case to say: If this person called and there were no previous calls that were made to this person, and there were no calls made afterwards to this person, it shows that the call was basically about the ZIMBABWEANS, and there are people who confirm that, which means the ZIMBABWEANS met with DRAMAT. That was the first report.

Now, using the same evidence, the second report is saying - and probably it put it in a way that it is kind of really more suggestive rather than straightforward and to the point, because we were saying even though COLONEL MADILONGA called GENERAL DRAMAT and they confirmed - all these people confirmed already he received a call - we do not have confirmation of what they talked about or what they discussed.

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27.03.15

INNOCENT KHUBA

MR JULY:


You see, the problem is unless you have evidence which says: I have never received a call from MADILONGA - and MADILONGA having said: I similarly didn't phoned, there was a need for me to make this call - in the absence of any information which seeks to suggest that the content of the call was disputed, or the call itself was disputed, there is no reason why that information was left out here.

MR KHUBA:

Also, what I would not agree, most especially on the analysis, is the issue that the information was not left out. It might be the way it was presented. For example, if I then acknowledge in the analysis, in the new report, that DRAMAT received the call, but I do not know what the call was all about, it really puts it in a way as if I cannot really decide whether DRAMAT is involved or not involved.

MR JULY:

You see, the problem with that submission is that you make the call, and whatever was said in the call - it doesn't matter how long it took for them to talk, but there was a meeting on 5 November. So one would then link the two and say: Then there is no way that DRAMAT

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27.03.15

INNOCENT KHUBA

could not have known about the presence of the
ZIMBABWEANS.

MR KHUBA:

Yes, that's true.

MR JULY:

That he can't say. Then, taking it to it's
logical conclusion, in the absence of any
other information which contradicts that call,
the call was about the same thing. But I'm
saying when you made this - this one seeks to
stay completely away from DRAMAT, this report.

MR KHUBA:

Probably the way it is presented seems to be
taking responsibility away from DRAMAT.

MR JULY:

Yes, and this one puts it very clearly. Let
me tell you, we may not agree with what was
said here in the first one - you may not agree
with it - but it put things into perspective.
Here is the call, here is the person meeting
with these people, here is the person
congratulating the officers, and how can you
say you don't know?

MR KHUBA:

I agree with you, yes.

MR JULY:

And the resources are being given to carry out
the operations. How do you then say you don't
know? But when you read this one, it is ...

MR KHUBA:

It neutralises everything.

MR JULY:

Yes, yes.

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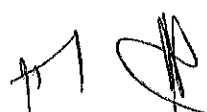
91

9 July/TFID
27.03.15

INNOCENT KHUBA

MR KHUBA:

Advocate, I think the biggest challenge is when you debate the evidence, most especially as I indicated previously, when you have dealt with an investigation yourself, and you get these inputs in terms of the case needing to be proved beyond a reasonable doubt, you need to look into this evidence and explore the possibility of it. This possibility should not be based on presumption, it needs to be based on evidence. But one important issue was to say - I think we debated a lot, myself and SESOKO about it, to say: Is the knowledge sufficient? We debated it. Previously I held a different view. But we debated it again: Is the knowledge sufficient? We came to a point, to say: But the fact that I know or the fact that I know about something - because we explored the part that says the DPCI was allowed to assist other countries. They've been assisting. I even drew another case involving ANGOLA. The responsibility of the investigator is to be able to comply with the legislative imperative. It means that if I go out there and get records of a cellphone, you being my boss would expect that I apply for a



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S. July/IRID
27.03.15

INNOCENT KHUBA

205 to get the things. Then I apply for a
205, I go and serve it, and when I say the
case is solved, you expect that I walk the
thin line of the Criminal Procedure Act in
order to attain whatever I have attained. 5

We asked ourselves to say, more especially in
line with the question of where the crime was
committed - I wanted to know if these people,
more especially those who were assisting
MALULEKE, would have known. 10

MR JULY:

Let me tell you, you would have used the same
report and come to this conclusion still. You
would have used the same report and come to
this conclusion. But once there are ...
... some things that are not there ... 15

MR KHUBA:

MR JULY:

MR KHUBA:

... things that have been removed. -

I think there I need to explain why things
have been removed, if they have been removed.

Because I agree with you that the contents of
the first report and the second report - there 20
are things that are missing. At first, when
you gave your explanation, I never had a
problem. But I'm looking through the
statement, in my statement, to say: How could
this statement be removed, because it does not

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INNOCENT KHUBA

8 July/IFPD
27.03.15

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this conclusion. But once there are ...
... some things that are not there ... 15
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MR KHUBA:

MR JULY:

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statement, in my statement, to say: How could
this statement be removed, because it does not

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6 July/IPID
27.03.15

INNOCENT KHURA

even have the name of DRAMAT? Do you get what I'm saying? The point of the matter is that when we dealt with the report there were only three hands that the reports went through. It was me, it was SESOKO and it was McBRIDE. 5 Only three. The other person, ANGUS, only became part of the meeting where these things were discussed in detail. But when it comes to the issue of working on the report, it was myself and it was MR SESOKO. But most of the 10 time it was me, because MR SESOKO is very slow in typing. I transferred the report to his computer, because I use a very small laptop, and sometimes when you have big fingers, you hit two letters when you want to hit one. So 15 I ended up working on his computer. When it was done I sent it through. But the things that you are showing me, how this evidence was taken out, most especially the ones that really implicate DRAMAT, I'm concerned. 20 Because even in the reports in the newspapers they say some of the evidence was taken out. I just said: These people are lying. I did not even bother, I just said: These people are lying. But my concern, when I'm looking 25



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S. July/TPID
27.03.15

INNOCENT KHURA

at this, is what really happened? I really have a problem.

But I also have a challenge that some of the evidence - and this is part of my statement, I do not think, in my own opinion, that if the idea on the agenda was to clear DRAMAT through trying to take stuff out, why do you take that one, because it has nothing to do with DRAMAT. So I do not know, because that report we did very quickly. We did it very quickly. If you check I think we signed it around the 18th. We did it very quickly, so I do not know how some of the information went missing. But I want to tell you it's my concern to say not only the information that implicates DRAMAT, but the information that is silent about DRAMAT. If I have to give you an answer on what really happened and what the reason was, I would be starting to learn to lie.

But in terms of your analysis, the analysis took a very, very different form. If you look at the analysis, it seems as if it was rewritten. It does not even conform with the old analysis.

MR JULY:

And it seeks to suggest that what was a

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27.03.15

INNOCENT KHUBA

factual thing is no longer a fact.

MR KHUBA:

Mmm.

MR JULY:

It's left out. Do you get what I'm saying?

MR KHUBA:

Yes.

MR JULY:

And what would have been considered in coming
to that conclusion, is left out in order to
come to this different conclusion. 5

MR KHUBA:

You know, I really respect your opinion on
that, but as a person who worked on the
report, myself as KHUBA never intentionally or 10
deliberately removed part of the report. No.

One very important thing, sometimes I do not
really regard myself as an intelligent person,
but I think operating through commonsense it
would tell me what is the use in removing 15
something in the report but leave it in the
docket? Do you see now?

MR JULY:

Yes.

MR KHUBA:

Because it's not the report that informs the
investigation, it's the investigation that ✓ 20
informs the report. So the fact that things
were not aligned properly - and probably
things were done hastily, I do not know, but
the issue is that on the report we had inputs
from ROBERT MCBRIDE, and those inputs we dealt 25

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27.03.15

INNOCENT KHUBA

with; most especially the spelling part. In terms of the evidential part I cannot really remember and cannot say. If the other person comes - because when we dealt with this report, there was MR ANGUS. He may shed some light on that. But what I still remember, there was no time, and I'm still repeating it, because I really do not. - If there is one thing that can put me in trouble, and I was telling my wife about it, the one thing that can put me in trouble about this thing is when I lie about it. Because I didn't do anything wrong, but once I lie about it then there is something wrong with it.

The issue is there was not even a single time where McBRIDE said to me: Change the report to suit DRAMAT. He might have made inputs, he might have queried how things were done. Sometimes the issue - most especially the issue of having a CRIME INTELLIGENCE member, he had a concern about it to say: Are you people not independent? We indicated to him that we are independent. He said: How did you involve a CRIME INTELLIGENCE member in the investigation? But I cleared that, and I told

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S JULY/IPID
27.03.15

INNOCENT KHUBA

him. I said: The reason why I involved him is because I got instruction, and I worked with him. This guy was never - I would have signed this report with him, but I realised that this report may end up in the wrong hands or the right hands, but they will know that I was working with MOSENG(?), so I wanted him to remain a secret colleague in terms of his part in the investigation.

MR JULY:

Let us go through these. You see, for instance, just in the way of showing how in the second report there was an avoidance of stating the factual statements, if you look at page 29 of the original report ... Of the original report?

MR KHUBA:

MR JULY:

Yes. It says:

"The operations carried out by TOMS to arrest Zimbabwean Foreign Nationals (it's under ANALYSIS) in Diepsloot in connection with the murder of a Zimbabwean police Colonel was led by Captain M L Maluleke, also known as Cowboy.

According to a letter retrieved from Captain Maluleke's laptop there was a

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8 July/1P20
27.03.15

INNOCENT KHUBA

meeting in August 2010 held between
Zimbabwe ..."

To that one you may deliberately not make
reference.

So it doesn't appear in the analysis? 5

MR KHUBA:

Yes.

MR JULY:

Okay. It's not in the findings?

MR KHUBA:

It says in the findings - there is only one
meeting that is being referred to. It talks

MR JULY:

about the success report. The only meeting to 10
which reference is made here is on:

"The success report that claimed that
Lieutenant General Dramat had a meeting
with the Zimbabwean police lacks detail
about the meeting itself." 15

But it says here:

"In August 2010 held a meeting with the
Zimbabwean authorities (indistinct)
wherein General Sibiya was appointed as
a coordinator regarding cooperation 20
between the two countries.

The obligation to assist is (indistinct)
should have emanated from the agreement
of the same meeting, as cited in the
success report. The letter dated 25

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S July/IP1D
27.03.15

INNOCENT KHUBA

2010/07/29 addressed to Commissioner
Shibande by Lieutenant Dramat requesting
a meeting of 5/08/2010 to discuss
operational matters, but limited to
fugitives of serious crime, like cash-in- 5
transit and (?)."

There is enough evidence that showed that
GENERAL DRAMAT not only knew about the
operation that led to the Rendition, but
sanctioned it in the following ways. He let 10
the ZIMBABWEANS come into the country for the
purposes of meeting with him.

MR KHUBA:

I still remember when I was raising that issue
- you know, most of the things when you are
raising them - it kicks. When we were 15
talking, I still remember when we were
debating this issue with him, we said he
allowed these people to enter the country. He
said no, he didn't allow (indistinct). Do you
get what I'm ... 20

MR JULY:

But what we do know in these particular
circumstances, is under normal circumstances
it is HOME AFFAIRS who would allow it. But in
this particular instance we have evidence
which says MATHEBULA phoned his boss, who 25

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5 July/1PTD
27.03.15

INNOCENT KHUBA

said: I know nothing of this, phone DRAMAT.
He then called DRAMAT and DRAMAT said: Let
them in. There is no evidence, even from
DRAMAT, which says: I did not talk to the
ZIMBABWEAN Police, I never said to this guy he
must allow these people to come in. On what
basis now do we leave that information out?
Okay, did you check DRAMAT's statement, the
warning statement?

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

No, you see, the warning statement - that's a
bad memory. It's not ...
It's not factual?

No, I'm saying it's a bad memory.

COLONEL DRAMAT:

"He will state that he is the Deputy
National Commissioner of the South
African Police Services. He
unequivocally points out that at no stage
during his correct role as the National
Head of the DPCI did he personally
authorise the unlawful and intentional
depriving of a person's liberty, or
movement, and/or his custodians of
control on any basis whatsoever."

MR JULY:

On which page is that?

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27.03.15

INNOCENT KHUBA

MR KHUBA:

It's page 25.

"He will further say that he never authorised anyone or sanctioned the kidnapping of any Zimbabwean Nationals. He knows of no action that he took or authorised which was aimed at defeating the administration of justice."

MR JULY:

And this is not responding to the issue of a call being made, because there are particular allegations, specific allegations that are being made.

MR KHUBA:

But if you look at the issue of the call, in terms of the warning statement - because he requested questions in writing, it was never contested with him. Because when we discussed the questions with ADVOCATE MOSENG, he was of the idea: Let us not be specific with him, because once you become specific you are restricted. I don't know whether you have those questions.

MR JULY:

No, no, let me tell you why - I don't have the questions, but I'm saying now you are the author ...

MR KHUBA:

... of the report?

MR JULY:

... of the report. What do you make of the

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8 July/IPXD
27.03.15

INNOCENT KHUBA

statement that you relied on to come to this conclusion, when a person says the following, that:

"He will state he is the Deputy National Commissioner and he unequivocally points out that at no stage during his correct role as the National Head of the DPCI did he ever personally authorise ..."

That is a different issue. He may have had the meetings, he may not have authorised, but that doesn't mean those meetings did not take place.

MR KHUBA:



What I want to put across is that we have two issues here. We have the issue that DRAMAT addressed, to say: Authorise the operation - and he did not authorise the operation. You have the second issue, which you said is whether he knew about the operation. That's a very critical point. If you look at the first one, whether he authorised it, of course we could not prove that he did or did not authorise it, but we can prove that he knew about it.

MR JULY:

Yes.

MR KHUBA:

When we did the evaluation of evidence, we

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S July/IP10
27.03.15

INNOCENT KHUBA

dwelt on what we could prove, whether he knew.
We debated the issue, whether knowing is
sufficient. That's where we arrived at a
point to say: MALULEKE had been deporting
people. Wasn't it that DRAMAT was expecting
him to have followed the procedure? Do you
get what I'm saying? 5

MR JULY:

You see, once you have the knowledge - this is
what SESOKO would have said. Once you have
the knowledge, and you also hinted at this -
once you say something happened in front of
you, as the police, which is unlawful, with
other policemen beating a person in front of
you, the failure to act in itself is an
action. Right? 10

MR KHUBA:

Yes.

MR JULY:

In this case, when DRAMAT becomes aware of
this, it is beyond question whether ...
... whether the other one followed procedure
or not? 15

MR KHUBA:

MR JULY:

Yes, because he knew about it.

MR KHUBA:

(Okay)

MR JULY:

He knew about the presence of the ZIMBABWEANS
here, he knew about the deportation of these
people, and if the evidence stands, he then 2

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congratulated them. So if he congratulated them, as a person in his position, he should have said what then happened. But that question you don't ask and answer yourself, you put that question, you assume he ought to have known that the procedure was not followed. 5

MR KHUBA:

So you are saying the point should be that he ought to have known that the procedure was not followed? 10

MR JULY:

Yes. Because he knows that police don't act. That's a process of HOME AFFAIRS. The deportation of people is not a police competence.

MR KHUBA:

Yes, and if you look at the documents, according to a guy from HOME AFFAIRS, he said somebody came with these documents and said: Do you know these documents? And he said it was MALULEKE. So my suspicion was it was the same MALULEKE who did that, he wanted to go and verify. My point was to say every step of the way - in fact, let me not say my point, let me say what we discussed when we were evaluating this case, was to come to a point to say: If MALULEKE did all these things, 20 21

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going to these people and all these types of things, does it mean that DRAMAT knew about it? That was one of my questions. And if I had probably applied the approach that you are using now, I could have arrived at a different position, which was my previous position. Do you get what I'm saying? Because for me - we discussed with MOSENG and others to say: But this person operating at that high level - but the discussion was not quite extensive, like I had when I had it with SESOKO, because he had this prosecutorial background, to say: With these things the defence is going to tear you apart. Like this issue, and this issue. Because when you do a report you also expect that probably the NDPP may give a copy to the defence. Actually we started to look into this evidence, trying to maintain - not a balance, but to say where does the scale tip heavily, and also looking at things where we could say: This is tangible, this is what we can use. I think the point that I did not really embrace much is the point that you are making, that with DRAMAT one is supposed to say that if he knew about it, that is

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INNOCENT KHUBA

sufficient.

MR JULY:

Yes. Another question I have, is isn't the role of DPCI to find a person criminally liable and that's it? If there is no criminal element there is no infringement of any - you can't find a person to have misconducted himself in terms of the Police Code, it has to be criminal. 5

MR KHUBA:

No, you can. What happens is that if you check - we normally use one regulation of SAPS, and it is called 20(z). 20(z) says the person has committed a statutory or common law crime, and that is what that person can be subjected to. There are other provisions of that regulation which would indicate that the person has caused what? - Something to do with the administration of what, what, what. 10 15

MR JULY:

That is what I was going to say, to say for instance now SIBIYA is being subjected to a disciplinary hearing. I'm not sure whether that also comes out of this report. I'm asking that question, to say: Is it criminal or nothing? 20

MR KHUBA:

No, it's not criminal, there are a lot of things you can use. 21

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INNOCENT KHUBA

MR JULY:

You can simply be charged as an employee of the Police, and be subjected to a disciplinary?

MR KHUBA:

You can. It's not only criminal, we do both. In fact, our Act is very clear. It says you can do criminal and you can do departmental. Most of the time when the criminal is strong, then we recommend that the person be charged departmentally for contravention of Regulation 20(z). That regulation talks about the person having committed a statutory offence or common law offence.

If it's a situation where you do not recommend a person to be charged criminally, you cannot use Regulation 20(z), because that issue of crime falls away. But when we did this, after we had done the analysis and everything, there was a departmental recommendation which was sent. I cannot remember it well, because I dealt with the criminal one. Whether I signed that or did not sign, I cannot remember, but I think probably I signed. That one said that we recommended only MALULEKE to be charged. We said MALULEKE must be charged in terms of Regulation 20(z).

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INNOCENT KHUBA

MR JULY:

Criminally?

MR KHUBA:

Yes. But these other ones like NKOSTI, because we did not recommend them to be charged for assault, we could not go and say: Charge them departmentally for 20(z). I think that was the rationale behind the issue of saying why the decision was that way. 5

Also, can I raise another point here?

MR JULY:

Yes.

MR KHUBA:

There was a memo - an info note, sorry, which was sent to MTHETHWA. That info note is very straight to the point, but we do not know whether you have it or not. Because that info note was written the same day, I think. It says what happened. It indicated what the boss has done, a review, and what, what. And that one places the role on our boss in terms of what he has done. I do not know whether you have that info note. It was around the 18th or the 20th, but somewhere around March. If you have, then it's fine. If you do not have it, I can try to find that information and give it to you somehow. 10 15 20

MR JULY:

No. That info note talks about what?

MR KHUBA:

The info note says that he came, he reviewed, 25

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INNOCENT KHUBA

he requested cases, and it talks to - so I do
not know whether the Minister handed it over.
But that info note - because I think when I
was speaking with SESOKO about the case, I
said there was an info note. He said: No, 5
there is no info note. I said: I remember
there was an info note. When we got that info
note, we realised that info note was sent. So
when I was in DURBAN I wanted to come with it,
because he has it in his computer, but he 10
said: No, no, I don't think they will need
it. I think he will be able to give it to me
after this, and I will find a way in which I
will give it to you. Because I want to assist
the investigation. 15

MR JULY:

Yes, we need the info note.

MR KHUBA:

Okay.

MR JULY:

So in a nutshell your changing of the report
was influenced by the discussions that you
had, and inputs - the discussions which are 20
purely of a legal nature with SESOKO, and the
inputs that you - let me put it this way.

1 is the new evidence;

2 was the debate on the possibility of the
charges sticking - this was a legal 25

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INNOCENT KHUBA

debate which involved who, you and ...?

MR KHUBA:

And MR SESOKO. I think the boss had inputs in terms of the - I do not know what he wrote on the paper.

MR JULY:

But did he have inputs in the report?

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MR KHUBA:

Some of them are cosmetic.

MR JULY:

Yes, some are cosmetic.

MR KHUBA:

But I cannot remember in terms of his view of the evidence.

MR JULY:

And whatever he has recommended or has put forward you cannot find because ... 10

MR KHUBA:

... we destroyed.

MR JULY:

... those documents were destroyed.

MR KHUBA:

They were destroyed. I do not know whether I can strike luck and get something, but I still 15 remember we said: Everything has been leaked now and we destroyed them. But I think I need to be able to put it in a way that will satisfy him, to say the new report was influence by the new evidence, that's point 20 number 1, and the review of the existing evidence. Those are the two major things.

MR JULY:

Of the existing evidence?

MR KHUBA:

Yes.

MR JULY:

What you will appreciate from our side, is we 25

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INNOCENT KHUBA

will say was the so-called new evidence new
and so materially different as to make you and
your team change the report?

MR KHUBA:

I wouldn't really have a problem with how you
view the process which was taken, and also the
product that came out of it. 5

MR JULY:

That's fine.

MR KHUBA:

The other thing I want to know, is what is it
that you would want me to provide in terms of
other documentary - I'm going to give you the
info note. 10

MR JULY:

Let's say so far it is the info note, but we
may have to call you again.

MR KHUBA:

If you call me - I do not really have a
problem, whenever you want me, I'm going to
talk. I'm going to talk. So I'm quite fine
with that. Whether you call me tomorrow, I
will come. 15

MR JULY:

That's okay. Let's do that. I think it was
a fruitful meeting. 20

MR KHUBA:

Good.

THE INTERVIEW ADJOURNS

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23.04.15

INNOCENT KHUBA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:


INNOCENT KHUBA

PRESENT: MR INNOCENT KHUBA - IPID
MR SANDILE JULY - Director, Werksmans
MS KERRY BADAL - Associate, Werksmans
MR KWAZI BUTHELEZI - Candidate Attorney

23 April 2015

MR JULY:

Today is 23 April, and in this matter it is
me, SANDILE JULY, KERRY BADAL, KWAZI BUTHELEZI
and MR KHUBA.. We have called MR KHUBA to deal
with the contradictions between his statement
and what we heard from McBRIDE. MR SESOKO
appears on both reports as a signatory to the
reports. Maybe, Mr Khuba, we must start with
this, and here is the issue. MR McBRIDE said
one of the reasons why he had to sign -
ordinarily he doesn't sign the report, and it
makes sense that he does not sign, and the act
makes no provision for him to sign.. He says
one of the reasons why he signed is because it

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INNOCENT KHUBA

involved two provinces, so he had to sign the report. Was that what you understood was the reason why he signed?

MR KHUBA:

That reason was never raised with me. My understanding was that he signed because he was the current head of the department. Even though there was nothing previously that a person would sign, he said he wanted to sign.

MR JULY:

But why did MR SESOKO sign?

MR KHUBA:

MR SESOKO signed because he was appointed head of investigation, he was the Acting Head of Investigation. The rendition was about the investigation. As the Acting Head of Investigation - and I do not know, but probably the fact that he participated in the issue of the second report, that might be the one.

MR JULY:

So he participated in the report, and would MCBRIDE have signed that report had he not participated in the report?

MR KHUBA:

If MCBRIDE could have found that report done, it would be very difficult - I think he signed because he knows what was in the report.

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INNOCENT KHUBA

MR JULY: Can you explain the issue around the docket?
On 7 March, you and MR ANGUS - and maybe
before we deal with 7 March, MR McBRIDE
started when, on the 3rd?

MR KHUBA: Yes, I think it was on the 3rd.
MR JULY: 3 March. Then who gave you a call to say that
MR McBRIDE wanted the report?
It was MR SESOKO.

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR JULY:

MR KHUBA:

MR SESOKO?

Yes.

You emailed the report to MR SESOKO?

Yes.

You don't know whether MR SESOKO gave it to
McBRIDE or not?

No, I do not know.

But you met with McBRIDE the day after you
emailed the report?

That's correct.

Which was the 5th?

Yes.

When you met with him on the 5th, what did you
discuss?We discussed the report. He wanted to know -
he wanted me to outline the process of
investigation from the beginning to the end,

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INNOCENT KHUBA

and I explained to him. He had concerns. At various stages of my investigation, which I explained to him, he asked questions, and I will tell you where. When I indicated to him that I investigated the case with the assistance of Crime Intelligence, then he asked: Why were you involving Crime Intelligence, because IPID is independent? I indicated to him that I was given instructions by the then Acting Executive Director. He wanted to know exactly how the instruction was given, and I explained to him that the then Acting Executive Director said she thinks that because this investigation was dealt with by Crime Intelligence, and they brought this case, I must rope in one of the investigators. She specifically mentioned him by name, saying that is COLONEL MOUKANGWE.

MR JULY:

When you were discussing this with him, did you get the sense that this person didn't know anything about the report, or were you discussing a report that a person had read or had knowledge of?

MR KHUBA:

I could pick up that he had knowledge

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INNOCENT KHUBA

MR JULY: of it.
So after the 5th there was another day, which was the 6th.

MR KHUBA:

Yes.

MR JULY:

You had another meeting on the 6th?

MR KHUBA:

Yes.

MR JULY:

That meeting on the 6th was the meeting where it was you, SESOKO, ANGUS and McBRIDE in one room?

MR KHUBA:

Yes.

MR JULY:

You don't know about the meeting between ANGUS and MR McBRIDE, because ANGUS said he had a meeting with MR McBRIDE shortly before that meeting?

MR KHUBA:

It seems, if I remember well, I found ANGUS there inside, sitting. We went there and sat, and that is where we continued.

MR JULY:

What was discussed in that meeting?

MR KHUBA:

What was discussed was the issue of - we started carrying on from what I said previously.

MR JULY:

Which was the previous day?

MR KHUBA:

Yes, and I felt as if MR McBRIDE wanted other people to know, to be briefed. Most especially on the issue of Crime Intelligence,

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INNOCENT KHUBA

he wanted me to walk on that path and emphasise, and basically issues like those ones he raised. I cannot remember whose evidence was discussed, but I remember very well on the 205 of LEBEYA, to say: How are you connecting this person? Now, I indicated to him that I was connecting LEBEYA not because he was a suspect. For me, if I find records of cellphones, and you have called this person regularly, I need to go to that cellphone and do a 205 to check whether you are friends, or was there something that was happening, especially around that time. He was not quite fine with that, but I explained to him, to say: These are the issues.

MR JULY:

But it then means that he had had sight of the report when he was asking those questions.

MR KHUBA:

That's why I say he might have, because even the previous day he had something in front of him, and I did not really look at it. Because you know, our boardroom table, if you sit there and somebody is there - I never knew what he was looking at.

MR JULY:

On 7 March, which was a Friday, you and ANGUS

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INNOCENT KHUBA

went to JOHANNESBURG.

MR KHUBA:

Yes.

MR JULY:

To the office of the DPP, SOUTH GAUTENG.

MR KHUBA:

Yes.

MR JULY:

What was your reason for going there?

MR KHUBA:

It was because when we discussed on the 6th, he asked where the docket was.

MR JULY:

Who asked?

MR KHUBA:

It was McBRIDE. I told him that on the docket I couldn't get information, because I had already sent an email on the 28th. The docket was with the DPP, GAUTENG, and I was given the name of the person, and they said it was ADVOCATE VAN ZYL. I indicated to him that I was looking for the docket from the previous advocate who was dealing with the case, ADVOCATE MOSING. Then he indicated: If you still have that evidence, you still have to go and collect the docket.

The question was where? Because the following day there was a very important summit which I was supposed to attend near BOKSBURG. But we said no, we were not going to attend. We were given an opportunity to say: Don't attend, go straight. On the issue of ANGUS - I don't

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INNOCENT KHUBA

remember whether we discussed with him that he must accompany me, because after that we went to SESOKO's office, where the deliberation continued. I cannot say that we had another meeting, it was just a deliberation about what was discussed. 5

MR JULY:

ANGUS seemed to remember that, that after McBRIDE's meeting you went to SESOKO's office.

MR KHUBA:

Yes, and we discussed it, but it was not another meeting. We just sat there discussing what had happened. I still remember very well ANGUS said to me: There is something that is wrong. What is wrong? I said: When we were talking, the boss could not look me in the eyes. I don't know, maybe it's not really a (?), because he would ask questions when he was just looking there. After that I said: Angus, I don't interpret things, it's fine, that is that, but tomorrow do you want to accompany me? He said yes. We didn't agree on the issue at the time, he said I want to leave at 04h00 or 05h00 because we wanted to beat the traffic. Fortunately we were staying in the same hotel. Early in the morning at 25

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INNOCENT KHUBA

04h00 or 05h00 in fact we used his hired vehicle, and I left my car. We drove straight to VAN ZYL. We arrived there, we found ADVOCATE VAN ZYL to be a very friendly guy, we talked to him, and were laughing.

MR JULY:

ANGUS says he didn't even know that the gentleman was VAN ZYL, he went for his own CATO MANOR matter, and he was walking down the stairs to check the actual floor you were on, he saw you with this gentleman, you had documents with you which he didn't even know was a docket, but he was signing that those bundles of documents were handed over to you. He was a witness to the handing over.

MR KHUBA:

Okay, so let me tell you this. I'm not really going to say that I'm going to assess whether what he says is true or is not true, but I am forced to say this. I know exactly, when we went there, he went specifically with me regarding the same issue on Rendition. There was no CATO MANOR in the picture. We never went to any office. Even if you check the register for that day, there was no other advocate consulted by MR ANGUS except for VAN ZYL. We had the name of VAN ZYL. Now, in

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INNOCENT KHUBA

fact there was this thing - you know, when a new boss comes in, MR ANGUS was also bragging about the issue that: The boss spoke with me for over forty-five minutes. It was like an issue of disclosure.

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MR JULY:

Do you remember what he said?

MR KHUBA:

Somewhere and somehow, because he wanted to go with me, I still remember my deputy, who is very close to ANGUS because they are on the same level, and I said: I'm going with - because I was briefing him, he's very close to my deputy. I was briefing him: I'm going with ANGUS. Oh, I know, that's fine, he's just going to check on what is going to happen; maybe the boss sent him to check (?). I said: No, I don't have a problem, there's nothing wrong. I did not want to go with him, but I felt he had been placed there to be able...

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MR JULY:

Did he tell you about his discussion with the previous matter?

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MR KHUBA:

No, he did not.

MR JULY:

He told us that the reason why he was called was because he was tasked to check whether you guys - and you in particular - had done the

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INNOCENT KHUBA

right thing.

MR KHUBA:

In fact, I realised that from the onset, because even though there was a little discussion about CATO MANOR when I was there in the meeting of the 6th, the main issue was the Rendition. The way he was going on, saying how he performed a better investigation than what I had done on Rendition - you see, I never wanted to comment on it. I kept quiet, and I said I was going to leave it like that. When we were there, my deputy said: Hey, that person was working for this other unit in the SAPS - I don't know what it's called, it's not Crime Intelligence, but they normally gather information.

MS BADAL:

CIG?

MR KHUBA:

Yes, I think CIG. They gather information.

MS BADAL:

CRIME INTELLIGENCE GATHERING.

MR KHUBA:

He indicated to me: You need to watch out. He used a word in Pedi - Hey, my boss, that (Sepedi) to indicate that he is going to listen to what you are saying and is going to report to the boss. Check what you're saying, he's my friend, I know. I went there. In fact, as a Christian, I decided when I was

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INNOCENT KHUBA

driving with him I was praying in the car. I was praying, I was praying, I was praying, and we arrived there. Even when we arrived at the office of VAN ZYL, I decided that I was not going to talk much, he will talk. I was happy, because as a white person I felt that this person would be able to have a connection with him. He explained the purpose, and I was just sitting there.

MR JULY:

Did he say what the purpose was?

MR KHUBA:

He said: Look we want the docket back. Then he indicated - I think they raised the issue of new evidence that needs to be attached.

MR JULY:

He raised the issue of new evidence?

MR KHUBA:

Yes, he raised the issue of new evidence.

MR JULY:

According to you was there any new evidence that needed to be attached?

MR KHUBA:

You know, I think that is subject to interpretation. To tell you we needed the docket to be collected is another issue. What I did, after we had collected the docket - I even talked to McBRIDE and said: Listen, McBRIDE - no, in fact, the worst situation was that I couldn't talk to McBRIDE. I still

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INNOCENT KHURA

remember now, I spoke to SESOKO, and said:
Why can't I attach all these things and return
the docket?

MR JULY:

What were you attaching, those statements?

MR KHUBA:

Yes, those statements and whatever was not 5
there, attaching them. At that time I had not
yet made copies, and I decided to make copies
of another duplicate report, because he said
to me: Whatever you have I want in my office
- this is McBRIDE. Copies - even copies of 10
the docket. So I said: Okay, that's fine.
I went and I gave him a copy, but my
interpretation was that it was done mainly for
security reasons. But as an investigator I
did not have a single thing, except I had the 15
external hard drive. That external hard drive
only had the expert report, so it was not part
of the documents and I just kept it. Then
when we collected the docket - the fact that
he signed the docket as true - who was 20
carrying? I was the carrying boy that day.
I was carrying the docket all the time, and
whatever, but I think he assisted me with
other files. We went back to the car and
drove, and while we were driving, I reminded 25

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INNOCENT KHUBA

him that the guy from the telephone records gave me something, but he still had something that he had not given me. He gave me the report between the docket being sent to MOSING and the docket being collected from JOBURG. 5
But he said it was not complete, he still had something that he wanted to iron out, so let's pass by. We went there, and then he gave me the record, including the disk that I gave you of the cellphone records. He gave me 10
everything, and then we packed it, and we went straight to McBRIDE. I think he wanted the one report. We went and briefed him, while we were having this ...

MR JULY:

So you went to ... 15

MR KHUBA:

Yes. When we briefed him, I never opened my mouth. It was ANGUS who was talking.

MR JULY:

That now we have the docket?

MR KHUBA:

Now we have the record, and this is it. It was fine. After that ... 20

MR JULY:

Did you give him the docket there, or did you take it to the office?

MR KHUBA:

No, I took the docket to the office. In fact, after we got all the files, we removed them from the hired vehicle and put them into my 25

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INNOCENT KHUBA

vehicle. Because we first arrived at the hotel - they gave us the record, and after that we drove together, but in different cars, to the venue. We arrived at the venue, we found him and then we briefed him. After we briefed him - and he was the one who was doing the briefing, which was quite okay, and, I never said much - from there, that was when we started with that process that I told you about.

MR JULY:

After, now the record is in the office, you take it to McBRIDE's office?

MR KHUBA:

The docket?

MR JULY:

Yes.

MR KHUBA:

No, the docket firstly went to SESOKO. When we were at SESOKO's office, we started to do the updates, and we opened the docket and did this and that, and that, and there were continuous - most of the meetings, in terms of the report, were not done when I was there.

MR JULY:

When you looked at those warning statements, in your view did they warrant the change of the report that was given on 22 January?

MR KHUBA:

Probably the question should be: If you alone

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INNOCENT KHUBA

were to review that, would you have changed
it, the answer is simply no. But because you
have people who are giving you inputs to say:
This, that and that. And when a person with
a prosecutorial background says: Can you 5
prove that, as an investigator you start
thinking that you can be a seasoned
investigator, but when you come to how you
weigh evidence ...

MR JULY:

But, Mr Khuba, didn't you guys discuss the 10
fact that: We are now discussing a report
which has been submitted to the NPA as the
final report, and the reason why it went to
the DPP in GAUTENG was for him to determine
whether to charge or not to charge - did you 15
at one point discuss that?

MR KHUBA:

No, that was never part of that. But you see,
my understanding of it is that some of the
answers would never emanate at the time when
things happened, but long after that, because 20
you start to understand your boss better.
Because when I started to deal with him on
certain matters, I said: Wow. I think there
was something that I said off the record, to
say: If you ask me whether he was suitable 25

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INNOCENT KHUBA

for the organisation, I would have my view.
I cannot say now, but I would have my view.
But the truth of the matter is to some of
these things you cannot really have an answer
when things are happening. For me, let alone 5
the issue of rank, to have the confidence that
could have pierced through the layer of
political appointee to say: You can go
wherever you want, but this is what I stick
with, it wouldn't have been possible. And I 10
was happy, because when you sign a report the
last signature is an approval, it's not a
recommendation, it's an approval. So the last
person at the bottom of pile, that's why it's
(?), is the one who takes everything. You 15
know, I was happy that he was signing this
report. I had to sign because I had to sign,
and I think I need to put that into context.
I had to sign because I had to sign, but I was
happy that he was signing the report. Whether 20
it was the norm is a different ball game, but
I was happy that he signed.
Were you happy that he signed because of the
changes in your conclusion? Is it because you
were not happy with the conclusions that you 25

MR JULY:

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INNOCENT KHUBA

reached?

MR KHUBA:

To tell you various facts, whether I was happy or not happy, for me is a different thing, and I want to come to that point so that I can clarify it for you, because when you find a situation where a particular decision is taken by the person of authority, the issue of your feelings disappears. Do you know what I'm saying? Because for me, when I do an investigation I do not have vested interests. However, I would want my efforts to be put to good use, but simply because McBRIDE signed and owned to whatever, I was happy to say: Now I'm fine. But that was not being happy about the context, I was happy that he was taking responsibility for the report. I cannot express my view about whether I was happy or not happy about the content.

MR JULY:

You seem to be suggesting that by the time that you were finalising the report you got a sense that a decision had already been made as to how the report should look.

MR KHUBA:

Yes, that one I'm going to correct, on the basis that if it was a once-off, but this

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INNOCENT KHUBA

report was commuting, so it was like a work-in-progress. You have this, you do this, you go back and you go back. I was only happy when I heard that the boss is actually happy. The reason why I was happy was because I was 5 not going to sit behind the computer.

MR JULY:

Let me tell you the difficulty that we sit with, and you can help us with that difficulty. In the absence of help from you we are left with no option but to say 10 you have three people who are dealing with the report. If there is no-one who owns or who is able to say: The information in the report was deleted - and make no mistake, I accept it's possible that you didn't know that 15 it was deleted - but when out of the three people who dealt with the report none of them know about the content or information that was deleted, it's a problem. It's all of them. 20

MR KHUBA:

And when you asked that day, the only question that caught me off guard, out of all your questions in my first interview, was the one about that, because I knew nothing about it. To tell you honestly, it was a surprise. I 25

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would understand why it probably happened that way. There might be different explanations. I never worked on that report on my laptop, I emailed it to MR SESOKO.

MR JULY: And when you created it, you printed also from 5
SESOKO's computer?

MR KHUBA: Yes, we were working on that. It seems that
what was done after the final product, which
the boss was happy about - and that is when
SESOKO emailed to me a copy for my record 10
purposes ...

MR JULY: And then he said: The boss is happy with this
one?

MR KHUBA: With this one. If I remember, and I cannot
say with certainty, the day we signed, he 15
phoned and said: Now when are you going to
come so that we can sign the report? Whether
we did sign on that, I cannot remember, but I
think specifically when I was called was that
we should sign the report. Then I said: I'm 20
going to be in PRETORIA, because I was still
doing some work around PRETORIA. It was
printed and I think he said: You can read
through it and check whether you are happy.
Even the most thorough person, when you have 25

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INNOCENT KHUBA

gone through that, you can tell me what is it
that you are going to be scrutinising, because
the word is that your boss is happy about it,
and it is someone higher than any mistake you
can find in the report. For me it was all 5
about the issue that the boss was happy about
it. I could not detect whether something was
taken out, I could not detect whether there
was an addition which was not part of what I
typed in, I could not detect anything. There 10
was nothing I could detect.

MR JULY:

McBRIDE signs on the 9th. You guys signed on
18 March, he signs it on the 9th, and he said
he signed the report that was already signed
by you. Were you there when he was given the 15
report?

MR KHUBA:

I was not there when he signed.

MR JULY:

Now, on 13 February MOSING gave CHAUKE the
docket, and attached to that docket was also
the report. 20

MR KHUBA:

Mmm.

MR JULY:

For him to decide on the merits of whether to
charge or not to charge.

MR KHUBA:

Mmm.

MR JULY:

CHAUKE reads the document and he gives it to 25

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23.04.15

INNOCENT KHUBA

VAN ZYL.

MR KHUBA:

Yes.

MR JULY:

Before VAN ZYL could even read the documents,
you and ANGUS come and collect them, and the
report dated 22 January was part of that 5
docket?

MR KHUBA:

Yes.

MR JULY:

So the question is what did you do with that
report which was attached to the docket?

MR KHUBA:

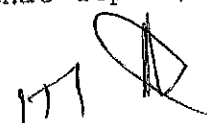
To tell you that as fact, I cannot remember. 10
I know that when we send dockets the report is
part of "B". That docket, Section B was a
separate lever arch file, because it had a lot
of things talking about the Extradition Act,
and what, what. It was a thick thing, but it 15
had that part. When we did a review, the
concentration on a (?), which is a separate
lever arch file. That file had another sub-
lever arch file, which I think is seven or
eight. Whether they removed that part or kept 20
that part, I do not know. But my commonsense
is that they would have removed it, because
they wouldn't send it with it.

MR JULY:

So who took the docket to the NDPP then?

MR KHUBA:

My role ended when I signed that report, in 25



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the absence of McBRIDE but in the presence of
SESOKO. When they took that docket - in fact
when it was handed in, I was told that I must
not keep anything, and it was indicated
precisely that nothing will be in SESOKO's
office, but in McBRIDE's office. In fact,
when the Minister started this issue of
referencing or requesting the copies of the
docket ...

MR JULY:

Yes, somewhere in August.

MR KHUBA:

... MATHENJWA called me, and MATHENJWA went
with me, and we were very close when we were
doing CATO MANOR. MATHENJWA called me, but
because of all this, suddenly the issue of
Rendition and the boss, I decided that I
needed to inform him. Probably I may be
diplomatic in how I tell him. MATHENJWA would
call me and say: Khuba, tell me what
happened? You know, he was suspicious, but
when MATHENJWA called me: I'm in the hospital
now, but I wanted that opportunity to start to
think, that whatever I say can come back to
me. I was going to tell MATHENJWA there was
no more friendship now, it's formal. I'm
telling him in terms of the procedure that was

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followed. I said: No, Mathenjwa, you can
speak with the boss, don't speak with me.
Then he said: Okay, I'm going to request
through the Minister. I went to McBRIDE and
said: I received a call from Mathenjwa, one 5
of the reference group, I think he will send
you the letter that is going to come through
also from the Minister, because he would want
to get in detail the facts of the case, so if
I'm explaining to him, it will not really make 10
sense. That was when McBRIDE wrote a letter
to the Minister: One of the members of the
reference group called Mr Khuba and even said
to Mr Khuba that he will tell you to write a
letter to me. That is when I started to say: 15
Hey, no, now I'm dead. When a point came,
because I once spoke to the Minister, and when
I spoke to the Minister when the Minister
wanted to know: Are you sure you are
cooperating, I spoke with the Minister, but 20
SESOKO and McBRIDE did not know that I had
spoken to the Minister. I said to SESOKO:
The Minister's PA called me. Of course she
called me, she did call me, but I wanted to
leave the Minister out of it. I never 25

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mentioned anything. I said: If he finds out later, it's fine, but I'm not going to tell him, because tomorrow he is writing to the Minister: You speak with my people behind my back. You see, those type of things. So all 5
of these things I started to think.

MR JULY: VAN ZYL says - well, we didn't speak to VAN ZYL, but there is a document we were given by CHAUKE. Somewhere around 18 June he called you about the docket, and you told him: No, 10
the docket has been given to the NDPP. He called MOSING, and MOSING said: No, I don't have the docket. Then he called you again, and then you confirmed: No, no, no, the docket is with the NDPP, and there was no 15
intention of returning it to you in any event.

MR KHUBA: Of ...?

MR JULY: In any event there was no intention of returning it to you.

MR KHUBA: The docket? 20

MR JULY: The docket. So the docket was then kept by the NDPP. But the problem with that, is that docket was allocated by the NDPP to CHAUKE.

MR KHUBA: Yes.

MR JULY: But you won't know how this docket ended up 25

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with the NDPP, because you say it was sent there by McBRIDE?

MR KHUBA:

Yes. I think on that part, in fact when VAN ZYL called me, I even tried to revert back to MR SESOKO, because even at that time me and my boss were not sure. Even if you can check my telephone records, I don't think I have called McBRIDE more than four times since he started. Now, when I was called by VAN ZYL, I indicated to him - because I was told that he was taking it, and I was excluded from that club. I'm telling you that they had numerous meetings with the NDPP - numerous meetings. I do not know how they met, but I was never part of even a single meeting.

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MR JULY:

That's fine. Like we said, you are at the centre of this thing, and that's the only reason ...

MR KHUBA:

But today it's more fruitful.

MR JULY:

Yes.

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THE INTERVIEW ADJOURNS

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ANNEXURE HIK/W 3.



PRETORIA CENTRAL CAS 2454/5/2015

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ANNEXURE
HIK/W 3.



WERKSMANS
ATTORNEYS

DELIVERED BY HAND

B Xaba
Directorate for Priority Crime Investigation

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Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr S July/lm// #4971156v2

DIRECT PHONE: +27 11 535 8163

DIRECT FAX: +27 11 535 8663

EMAIL ADDRESS: sjuly@werksmans.com

7 July 2017

Dear sir

STATEMENT

- 1 Be advised that I stand by the statement made by me which has been provided to you.
- 2 I trust you find the above in order.

Yours faithfully

Sandra July

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa

Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Artelro T Bata LM Becker JD Behr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Drlman S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Kiloran N Kirby HA Kotze S Krige PJ Krusche P Je Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo SM Moerane C Moraitis PM Mosebo KO Motshwane L Naidoo J Nickig JJ Nlemand BPE Olivier WE Oosthuizen S Padayachy M Pansegrouw S Passmoor AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhan L Rood BR Roodhman W Rosenberg Eric NL Scott TA Sibidla LK Silbermann JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell JG Theron JJ Truter KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski G Wicking M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

JOHANNESBURG • CAPE TOWN • STELLENBOSCH • TYGER VALLEY

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AFFIDAVIT

I, the undersigned,

SANDILE JULY

do hereby declare under oath and state that:-

- 1 I am an adult male attorney practicing as such, and a director at Werksmans Attorneys Incorporated.
- 2 Unless stated otherwise, the facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge, both true and correct.
- 3 On 23 February 2015, Werksmans Attorneys was appointed by the Minister of Police, Mr Nathi Nhleko ("**Minister**"), to conduct an investigation into the reports submitted by the Independent Police Investigative Directorate ("IPID") relating to the rendition of five Zimbabwean nationals. I was the lead lawyer in the investigation and supervised the finalisation of the report which was subsequently submitted to the Minister.
- 4 Included in the terms of reference for the investigation were the following questions --

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4.1 Who and under what circumstances the original report was altered and/or how the second report came about with both reports being signed by the same person?;

4.2 whether any misconduct or offence had been committed and if so by whom?;

4.3 whether there was prima facie evidence of misconduct and criminal liability by Lieutenant-General Dramat, Major-General Sibiya, and any other officers mentioned in the original report?;

4.4 the circumstances under which report and the docket handed in the NPA and what happened to the docket whilst in the NPA's possession?; and

4.5 any other matter which might have come to our attention during the investigation which was relevant to our conclusions and findings.

5 During the course of our investigations, I interviewed the following persons and the available transcripts of such interviews are attached to this affidavit –

5.1 Annexure "SJ02" - Colonel Moukangwe (30 March 2015);

5.2 Annexure "SJ03" - Glen Angus (31 March 2015);

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- 5.3 **Annexure "SJ04- SJ06"** – The first consultation conducted with Mr Innocent Khuba on 26 March 2016 was not transcribed, however, I have attached as annexure **"SJ04"**, a copy of a draft summary of the interview, which was drafted by a candidate attorney at Werksmans, Mr Kwazi Buthelezi. Mr Innocent Khuba was further interviewed on 13 and 23 April 2015, transcripts of these interviews are labelled **"SJ05"** and **"SJ06"**;
- 5.4 **Annexure "SJ07"** - Mr Mosing, Senior State Advocate, at the office of the NDPP (Head of Special Projects Division) (14 April 2015);
- 5.5 **Annexure "SJ08"**– George Baloyi, Deputy Director of Public Prosecutions, North Gauteng (17 April 2015);
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- 5.7 **Annexure "SJ10"** - Mr Mzinyathi, Director of Public Prosecutions: North Gauteng (17 April 2015); and
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- 5.9 Advocate Nomgcobo Jiba, Acting National Director of Public Prosecutions (no transcript available);
- 5.10 Matthews Sesoko, Head of Investigations: IPID (no transcript available).

*[Handwritten signature]**SNF*
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6 Pursuant to the interviews and an analysis of the documentation provided to us, Werksmans Attorneys concluded a report based on the terms of reference. The report was finalised and delivered to the Minister on 24 April 2015. A copy of this report is attached herewith as "SJ01" along with a compact disc containing the actual recordings of the abovementioned transcripts.


SANDILE JULY

I certify that this affidavit was signed and sworn to before me at Sandton on this the 23rd day of March 2016, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking the oath, considered the oath to be binding on his conscience and uttered the following words: "I swear that the contents of this affidavit are both true and correct, so help me God".


COMMISSIONER OF OATHS

Full Name:

Business Address:

Designation:

Capacity:

SIKHONA FUNANI

Practising Attorney

COMMISSIONER OF OATHS EX OFFICIO

Block B, Ground Floor

Kingsley Office Park

85 Protea Road, Chislehurst

Sandton

Tel: 011 326 5439/37 Fax: 011 326 5463



HIK/W3

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AFFIDAVIT

I, the undersigned,

SANDILE JULY

do hereby declare under oath and state that:-

- 1 I am an adult male attorney practicing as such, and a director at Werksmans Attorneys Incorporated.
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- 5.10 Matthews Sesoko, Head of Investigations: IPID (no transcript available).

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COMMISSIONER OF OATHS

Full Name:

Business Address:

Designation:

Capacity:

SIKHONA FUNANI

Practising Attorney

COMMISSIONER OF OATHS EX OFFICIO

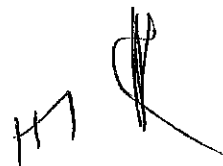
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ANNEXURE HIK/W 4.



AFFIDAVIT

HIK/W4

I, the undersigned,

BILLY TLHABANE MOELETSI

Do hereby make oath and say that:

1. I am an adult male South African with identity number 7701195480088 residing at 72 Ouklipmuur Street, Equestria extension 187, Pretoria.
2. The facts contained in this affidavit are true and correct and are within my personal knowledge, unless otherwise stated or the context determine otherwise.
3. At all relevant time pertaining to the events covered in this affidavit, I was employed by the National Prosecuting Authority ('NPA') as a Senior State Advocate and was based at 123 Westlake Avenue, Weavind Park, and Pretoria. My supervisor during this period was Adv. Anthony Mosing, a Senior Deputy Director of Public Prosecutions at NPA.
4. I am no longer employed by NPA having resigned in January of 2015. At the time of compiling this affidavit I did not have in my possession any docket, affidavit, statements, report or notes pertaining to this matter.
5. I was requested by the investigating officer of Pretoria Central CAS 2454/05/2015, Colonel Madela Hlatshwayo to provide a confirmatory affidavit to the events covered in Adv. Mosing's affidavit.
6. I have perused the affidavit of Advocate Anthony Mosing and confirm the content thereof in so far as they are applicable or made reference to me.

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AD PARAGRAPH 5-13 OF ADV MOSING'S AFFIDAVIT

7. I confirm the contents of these paragraphs and in addition states the following:

7.1 Adv. Mosing assigned this matter to me. We dealt with this matter together and he became my leader in so far as our duties and functions were concerned.

7.2 Adv. Mosing and I attended a number of meetings pertaining to this matter with Colonel Moukangwe of the South African Police Service.

7.3 I understood my role to be that of guiding the investigation.

7.4 At a later stage Mr Innocent Khuba of the Independent Police Investigative Directorate (IPID) joined the investigating team.

7.5 I was shown a copy of a document marked "AM1" dated 04 September 2013. I recognise it as being a draft report compiled by Mr Khuba and submitted to us. The handwritten notes on the left hand side of the page were made by Adv. Mosing.

7.6 I was further shown a copy of a document marked "AM2" dated 22 January 2014. I recognise it as being a draft report compiled by Mr Khuba and submitted to us.

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7.7 I was further shown an internal memorandum from NPA dated 13 April 2014 compiled by Adv. Mosing and me. This memorandum was prepared for the Director of Public Prosecutions, South Gauteng who had to make a decision whether or not to charge any of the suspects mentioned in the IPID report and the case docket. It is clear from the contents of this memorandum (in particular paragraph 7 thereof), that we supported the recommendation made by IPID to pursue criminal prosecution of all the suspects except Lt General Major Shadrack Sibiya. The reasons for not supporting criminal prosecution against Lt General Major Sibiya are provided in the said memorandum. I must further state that at some point after the memorandum and the case docket were submitted to the DPP South Gauteng, I was contacted by the Adv. Zaais Van Zyl, the deputy Director of Public Prosecutions, South Gauteng enquiring about the whereabouts of the case docket in this matter. I informed Adv. Van Zyl that the case docket was not brought back to me or Adv. Mosing and that we did not have any further dealing with this matter after it was referred to DPP South Gauteng for a decision.

7.8 I was further shown a copy of a document marked "AM3". I recognise it as a draft report compiled by Mr Khuba and submitted to us.

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7.9 I was not part of the meeting that Adv. Mosing attended with the then NDPP, Mr Nxasana in December 2014. I can recall that Adv. Mosing summoned me to his office after meeting the then NDPP and we discussed at length the recommendations in the IPID report. I noticed that the IPID recommendations were now substantially changed from the previous versions of the reports.

7.10 In mid-2015 I was called by Wersksman Attorneys for an interview regarding the internal investigation that they were conducting. I did not attend the interview due to other pressing commitments.

7.11 I had no further dealings with this matter.

8. I know and understand the contents of this affidavit. I have no objection in taking the prescribed oath and consider same to be binding on my conscience.

B. Molets

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The deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and sworn to before me at Pretoria on this the 08th day of December 2015, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice, R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS

MADECA ISRAEL HUYSAWANE
DPCI - CATS
218 VIBSAGIE STREET
PRETORIA
SAPS : CAPTAIN

HI

ANNEXURE HIK/W 5.



Amendments to
Drafts

ABHIK/WS
V6-PIK-SUP-256
Am 2
Ab
Ab



ipid

Department:
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

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

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

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

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	Dlepsloot 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

1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibilya. 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 Sibilya 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 Sibilya 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 Mithelsi 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 Sibya be consulted to provide direction in the matter. A short while later General Sibya 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 Bronkhorstpruit 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: 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 Sibya 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 Sibya. 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 Sibya 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 Sibya 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 Pritchard 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 Sibiyi 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 Sibiyi.

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 Sibiyi. On 2010/11/05 Gen. Sibiyi 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 Sibiyi, 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 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 Mpofo: 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

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 Bikini 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 Bhokisisa 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 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 Belt 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 screened by Immigration Officer.

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

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

Potlswa 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 Elberg: He state that he is an Immigration Officer based at Belt 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 Belt 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: 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 Belt 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 Radzllani 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 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 Belt Bridge. He will further state that Colonel Madilonga was one of his team members posted at Belt 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 Duvhani Sharon Radzilani: She will state that in 2010 she was the direct supervisor of Colonel Madilonga at the Belt 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 Sibiyi.

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.

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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 Belt 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 Police station, Captain Maluleke detained the suspect and they then knocked off.

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Johannes Mpati Moatshe: 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 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 Nyonl 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 Nyonl to join the 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 Rimbuda: 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.

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:

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 Wlness 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 Wlness 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 Balt 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 Balt 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

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 Dlepsloot 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 Belt 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

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

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being release he was transported to Belt 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 Belt 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 Maghawe Sibanda were deported through Belt 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 Belt 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.

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

Belt 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 Sibya (0725953168): Upon perusal of the cellphone records it was discovered that Major General Sibya 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.

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 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 Leheya: 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

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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 Sibya wherein General Sibya 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 Madllonga 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 Madllonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Belt bridge Telekom records (Col Madllonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madllonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madllonga 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 Majuleke 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 Mafalla 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 Madllonga 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 Majuleke, 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 Mgwanya, 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 Sibiyi 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 Ntonteni 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 Sibiyi was both at the scene and planning venue. The meeting held between IPID and General Dramat on 2013/03/07 confirmed that General Sibiyi 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 Sibiyi show interaction between them at various milestones of the operation. Following suggest the involvement of General Sibiyi:
 - 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 Sibiyi during and shortly after the operation. Col Neethling also stated that he should have reported progress to General Sibiyi during the operation. However the cell phone records of General Sibiyi 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 Sibiyi was in the car rather than seeing him personally.
 - The meeting held in Zimbabwe wherein General Sibiyi 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

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 were 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 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 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

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.

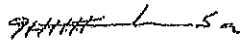
- o Statements of Constable Rammbuda and Meyer provide valuable evidence that Captain Maluleke took Gordon Dube to Zimbabwe even though he was facing serious charges (five cases including murder) in South Africa. Statements provided to Constable Meyer by Captain Maluleke states that Gordon Dube was handed 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.
- o The OB entry dated 28/01/11 shows that Captain Maluleke booked out Johnson Nyoni to Balt 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 Balt 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.
- o 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.

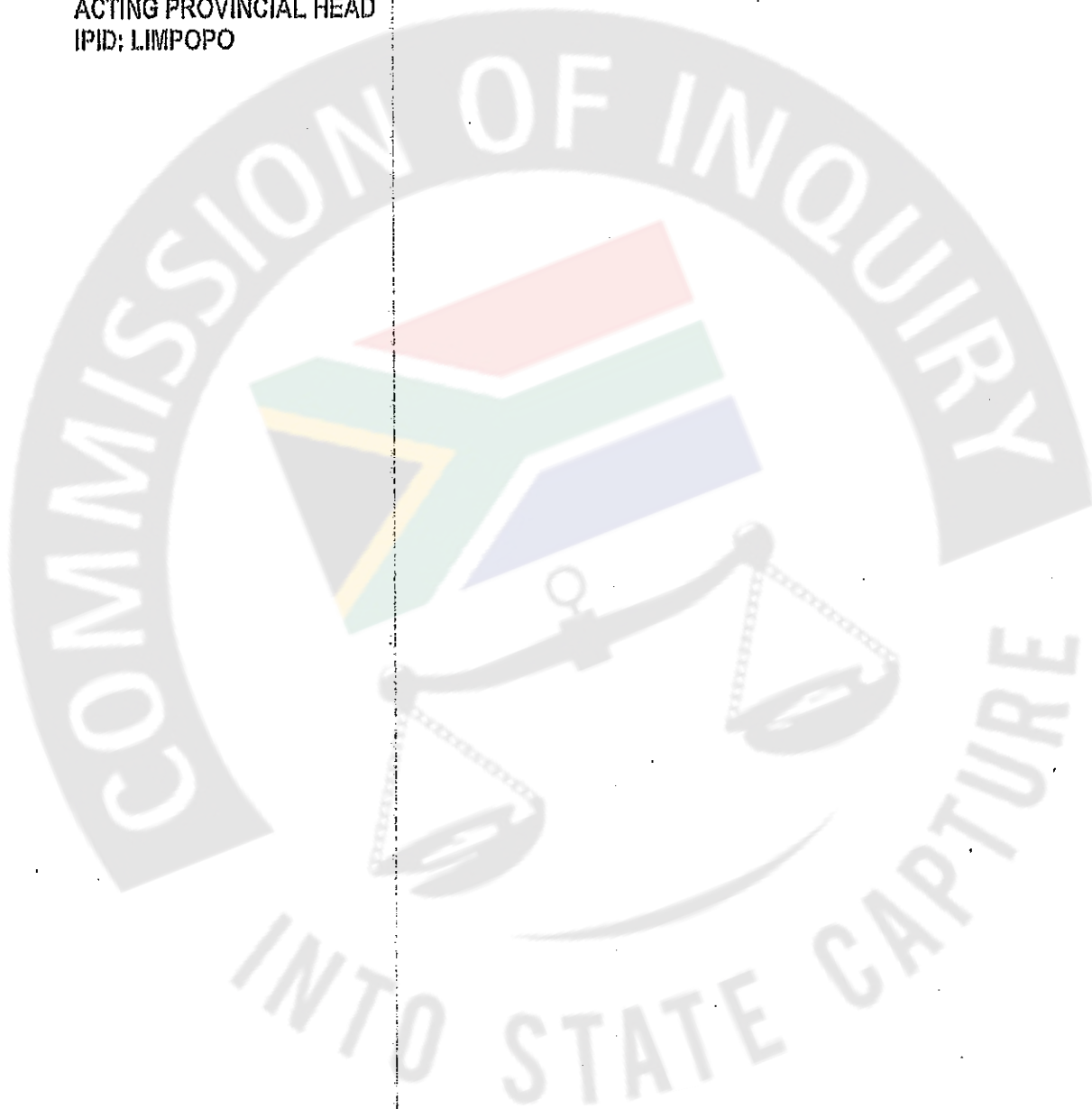
The following members' involvements were found limited to two incidents which took place on 05/11/2010 and 20-22/11/2010; Constable Radebe, Captain S E Nkosi and Warrant Officer Makoe. They were involved in the assault of Zimbabwean Nationals during arrest.


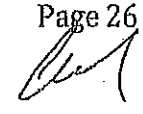
RECOMMENDATION

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 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)


Mr. Hl KHUBA
ACTING PROVINCIAL HEAD
IPID: LIMPOPO





M1

ANNEXURE HIK/W 6.





ipid

Department
Independent Police Investigative Directorate
REPUBLIC OF SOUTH AFRICA

Private Bag X9525, Polokwane, 0700, 66 A Market Street, Female Building, 2nd Floor, Polokwane
Tel.: (015) 291 9800 Fax: (015) 205 3409

Enq: I H Khuba
Date: 2013/10/22

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 Recommendation
1.4 Report Date	22 October 2013
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

1. BACKGROUND

- 1.1 The Independent Police Investigative Directorate received a complaint of alleged renditions involving members of the DPCI headed by General Sibiyi. 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 Sibiyi, 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 Sibiyi 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.

- A1
A15
3rd?
- 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 Mthethi 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 Bronkhorstpruit 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.

A2
A11
3rd. 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.

A4
A14 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 Pritchard Chuma was detained in Alexandra Police station. He will further state that Captain Maluleke was reporting directly to General Sibiyi and whenever torture of the suspects was to be carried out, he condoned it.

A3
A18

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 Sibiyi 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.

A5
A17

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 Sibiyi. On 2010/11/05 in the evening he received a call from W/O Makoe that their Commander Gen. Sibiyi 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 Sibiyi wanted them to meet at Diepsloot Shoprite. General Sibiyi 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.

A6 +
A11

Desmond Campbell: He will state that on 2010/11/05 General Sibiyi 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.

A7
A13 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.

A12 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 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.

A24 Sibongile Mpofo: 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.

A20 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

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.

A21

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 Blkins Nyoni, the brother of the deceased that Johnson Nyoni has died.

A22

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.

A23

Madala Bhokisisa 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.

A24
Laili Malule

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 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 Belt Bridge.

A26 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 Dumlsani 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.

A27 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

A29 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.

A28 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 screened by Immigration Officer.

A33 Job Jackson: He will state that he is an Acting Deputy Director 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.

A31 Potlswa 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.

A30 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.

A37 Richard Peter Elberg: 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.

A39 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.

44 STATEMENTS OF MEMBERS OF SAPS IN LIMPOPO

A51 Ndanduleni Richard Madllonga: 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 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 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.

AS3 **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.

AS4 **Colonel Doyhani 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.

AS5 **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

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.

ABO 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.

ASL

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 Belt 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.

AB1 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.

AB3
Tshabalala ?

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.

A61

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.

A64

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

A63

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

A78

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.

A69

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 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.

A68

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.

A75

Mr M Mngwenya: He will state that he is a member of Crime Intelligence and he was involved in the operation that traced and arrested Godl Dube. He will further state that on 26/01/2011 he was called by his colleagues to attend a braai at Silverton Hawks. When he arrived he participated in photo shoot and they were addressed and congratulated by General Dramat for the arrest of Johnson Nyoni.

STATEMENTS OF DIEPSLOOT SAPS MEMBERS REGARDING GORDON DUBE

A72

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 withdraw the case so that he could be able to transport the suspect and the firearm to Zimbabwe.

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 Sliverton. 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.

1973 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.

1974 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:

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, Dumanl 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 Dumanl 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 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. *Facts?*

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." *authenticity?*

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 Bait 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. *13 check*

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

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.. *check*

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 Sibuya and General Dramat went to Zimbabwe to discuss matters of cooperation on cross border crimes. General Sibuya 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. *Opinion*

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

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.

+ Ndanga
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 Balt 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 Balt 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.

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

? { **Balt Bridge Movement data:** The data entails information pertaining to the entry and exit of people who were identified by Colonel Madllonga 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 milestones of the operation as deduced from witnesses' statements and documentary proofs. } no.

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 Madllonga on 08/11/2010 at 19:10:47, when he was approaching Musina. The information is also corroborated by Colonel Madllonga.

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

Cell Phone records of Lt Col Madllonga: 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 show his interaction with Captain Maluleke in line with his statement.

5.6 OUTSTANDING INVESTIGATIONS

The following investigations are outstanding:

- Warning statement of General Dramat, General Sibya, Warrant Officer Makoe and Constable Leburu.
 - Cellphone data interpretation report and mapping. * NB
- Capt Nkosi

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 Sibya wherein General Sibya 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 Madllonga 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 Madllonga's version is corroborated by Brigadier Makushu and Colonel Radzilani. The cellphone records of general Dramat and Belt bridge Telekom records (Col Madllonga's extension) show that General Dramat received a call from 015534 6300 at 20h56 on 04/11/2010. This corroborates the version of Madllonga, Lt Col Radzilani and Brigadier Makushu about the call made in connection with the Zimbabwean police. According to Lt Col Madllonga he was informed that the purpose of the Zimbabwean police to enter into the

Opinion.

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.

- 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 KOSI@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.

*Mr. Hlatshwayo
Bela confirms
meeting*

He committed the government resources into the operation: Apart from other resources used, on 08/11/2010 Captain Maluleke went to Bait Bridge (Limpopo) for Transporting Zimbabwean Nationals and claimed overtime. On 24/11/2010 he went to Bait 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.

- Evaluation of the above findings: Despite the fact that General Dramat as an Accounting Officer did not sign any claim of Captain

- o Witness stated that he was seen during the operation that took place on 22/11/2010 which led to the arrest of Prichard Chuma
 - o 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.
 - o 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 the cellphone records of Major general Sibiya do not corroborate the witness version that he was at the scene.
- o 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 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.
- o The involvement of Captain Maluleke as a foot soldier in the operation has overwhelming evidence. The following evidence against Captain Maluleke where uncovered;
 - o 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 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 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 Bait Bridge, which confirms that Immigration Officer Kobelo Margret Mohlahlo was off duty on the 7th and 8th of November 2010.

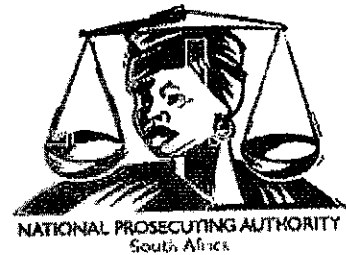
- o The cellphone record also show Captain Maluleke contacting Zimbabwean number in the morning of the 08th November 2010 shortly before booking the suspects to Bait Bridge.
- o On 23/11/2010 on the request of Captain Maluleke, Warrant Officer Selepe booked out Prichard Chuma from Alexander Police station. He transported him to Bait 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 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.
- o 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.
- o 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.

*No it did proceed
but not guilty
verdict -*

ANNEXURE HIK/W 7.



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



INTERNAL MEMORANDUM

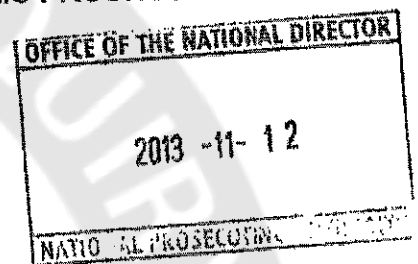
→ TO: MR M.S.O. NXASANA
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV. N JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

FROM: ADV. A MOSING
HEAD: SPECIAL PROJECTS DIVISION

SUBJECT: PROJECT X CASE – RENDITION

DATE: 12 NOVEMBER 2013



Dear Mr Nxasana and Adv Jiba

1. PURPOSE

The purpose of the memorandum is to provide a detailed report on the progress of the investigations conducted by the IPID as requested by Adv. Jiba. The matter has been recently reported in the media and I believe that the NDPP has been furnished with an unsworn statement by General Dramat concerning the matter. It is necessary to provide the background and detail of this investigation in order to enable you to make informed decisions thereon.

2. BACKGROUND

I attached hereto our previous memoranda to Adv Jiba wherein the background of the matter appears marked Annexure "A" and "B". In addition and in light of the

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allegations of a "smear campaign" made by General Dramat in the aforementioned statement and the speculation and comments in the media following a leakage of the information in the docket to the media, I would like to point out that the Civilian Secretariat in the Office of the Minister of Police had initially conducted its investigation into the allegations of Rendition of Zimbabwean nationals following an exposition in the Sunday Times during 2011. Various questions were also posed in Parliament at the time. The SAPS, and in particular the DPCI, had responded to the media expose and parliamentary questions and gave a certain explanation, which the Civilian Secretariat found unsatisfactory. A thorough Criminal investigation was called for by the Minister's office. The Minister of Justice and Constitutional Development, the Honourable Jeff Radebe is also on record, when he, among other occasions, addressed the conference of Senior Managers of the NPA during 2012, calling for these allegations to be investigated and thereby reflecting the Governments concern with the allegations.

The Special Projects Division was requested to provide the necessary guidance to the investigating team, whose investigations are not yet complete as at the writing of this memorandum, but have nevertheless provided a clearer picture of what may have transpired during these operations conducted by the DPCI. Adv B Moeletsi and writer were responsible for providing the guidance to the investigators.

3. SUMMARY OF FUTHER EVIDENCE

Significant progress was made by the investigating team since July 2013. In summary the following evidence was obtained:

- Statements on various members who participated during the first arrests in November 2010. Of significance is that these confirmed for the first time that the operation was carried out in connection with the murder and robbery case that took place in Zimbabwe and also the presence of Zimbabwean police officials during the operation and not, as previously reported by the DPCI, that they were merely investigating serious violence crime suspects, who, because they could not be linked to specific crimes, ended up being deported because they were illegal in the country.

- Statements obtained from members involved during the events of January 2011 when a further two people were arrested on 12 January 2011 and again on 26 January 2011, respectively and both handed over to the Zimbabwean police on 28 January 2011. These, for the first time, included statements of members of Crime Intelligence Gathering (CIG) of the Pretoria office, who seem to have been used to assist during these latter operations in January 2011. Evidence shows that these CIG member were carrying out their normal duties of tracing most wanted suspects around the Wierda Brug policing area, of which a person by the name of Gordon Dube was at the top of the list. This person happened to be one of the outstanding people that were sought by the Zimbabwe police regarding the incident. These CIG members were approached by Col. Maluleke (Maluleke), who was leading this initiative to trace and arrest those involved in the Zimbabwe incident, since the suspect Dube was also sought by Maluleke. Through use of sources the CIG members managed to trace Dube in Diepsloot and he was arrested on Wierda Brug cases, including for murder and robbery. He was shot during the incident and an unlicensed fire- arm was seized during the arrest. Other suspects were also arrested with Dube. All suspects were taken to Wierda Brug Police station and charged. They made their appearance in the Atteridgeville court on these charges and the case was remanded to 28 January 2011. They were naturally kept in custody. It transpires that Dube did not attend the first appearance as he was receiving treatment for the gunshot injury, but he was nevertheless required to attend the next court appearance.
- Due to the successes made by the CIG members in arresting Dube, they were requested by Maluleke to also trace Nyoni, who was the last person on his list. Through making use of the same source the CIG members managed to trace Nyoni to an address in Diepsloot. Maluleke was informed and arrangements were made to arrest him, using this time the TRT unit of Johannesburg, which had been based in and around Diepsloot due to xenophobic violence at the time. This person was arrested on 26 January



2011 and transported directly to the offices of the DPCI head office in Silverton, Pretoria by some of the members of the TRT unit. Upon arrival, all the members were allegedly addressed by General Dramat and thanked for their efforts. Photographs were taken of the group. Two members of the Zimbabwean police were present throughout this operation driving a white BMW with Zimbabwe registration numbers and are visible on photos taken at DPCI head office. A braai was organised in honour of all members who participated in the operation. Nyoni was taken to the Moot police station and detained there. The entries in the record books of the police station reflect that he was detained for fraud. The records also show that he was booked out on 28 January 211 by Maluleke to be transported to Beit Bridge border post. The reference to Fraud allegations is significant, as another docket was traced which was a fraud docket registered at Silverton police station with the suspects being Johnson Nyoni and Gordon Dube, similar names to the people handed over by the DPCI to Zimbabwe Police. It looks like it was intended to confuse. This is being probed further through interviews of the investigating officer and the suspects of this Silverton docket, which was mysteriously never taken to court.

- On the day that Dube was due to appear in court in Atteridgeville (28/11/2011) he was booked out of prison by the investigating officer from Wierda Brug, one Leon Meyer, but instead of court, he was handed over to Maluleke on the latter's insistence, stating that the suspect Dube is to be transported and handed to the Zimbabwe police to be dealt with there. He further informed the investigation officer that he will make arrangements with the prosecutor to withdraw the case. Further details as to what happened with the SA case in Atteridgeville are still being followed up. The evidence further shows that both Dube and Nyoni were transported together to the border and handed over to the Zimbabwe police. Maleleke made an affidavit at the time in which he stated that the suspect Gordon Dube was handed over to the Zimbabwean Government through "Immigration Related Matters" and that he was sentenced to life imprisonment by the Zimbabwean Government and will never be back in South Africa. This affidavit is presumably intended to close the cases against Dube in South Africa.

- The firearm seized during the arrest of Dube was identified as the firearm that was robbed from the Zimbabwe Police Colonel killed during the robbery incident in Bulawayo. It had been sent to Ballistics in South Africa in the normal course, but was later fetched from Ballistics on instructions of Maluleke and handed over by Maluleke to the Zimbabwe police on the day of Nyoni's arrest. The handing over is also captured on photographs.
- The CIG members were commended by a letter from the DPCI directed to among others the Head: Crime Intelligence, Lt. Gen Toka. Furthermore A letter from the Zimbabwean Police Provincial CID directed to The Commander Criminal Investigations Unit, SAPS dated 14 March 2011 commending the four members of the CIG for the assistance in the tracing and arrest of Dube and Nyoni. This furthermore was referred to the Office of the then Provincial Commissioner, Gauteng, Gen. Petros, who gave out letters of commendation to each of the four members involved.
- Documentary evidence recovered from the laptop used by Maluleke at the time and which had been formatted and decommissioned, further provided evidence and insight into what transpired during these operations. These show that the Zimbabwe police visited the DPCI and had a meeting with General Dramat on 5 November 2010. Following on the meeting Maluleke was tasked to carry out the operation to trace the people said to have been involved in the incident in Zimbabwe as he is shown to have done (Interestingly Maluleke was promoted to his current rank after these events as he was a Captain at the time of the operations). This visit is corroborated by the evidence of the member who worked at the border and related the story of the Zimbabwe police entering the country to see Dramat, whereupon he had called Dramat to confirm. Proof of such a call to Dramat's official cell phone can be found from the telephone records of the witness's office and on Dramat's cell phone records. The meeting with Dramat is also corroborated by an affidavit of the then SAPS spokesperson, McIntosh Polela, that he was introduced to Zimbabwean police members, who were

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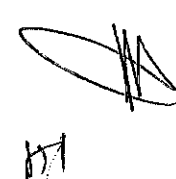
having a meeting with Dramat by Dramat himself. He also did enquiries subsequent to the events reported in the Sunday Times during 2011.

4. OUTSTANDING INVESTIGATIONS

As can be seen from the above there are still some investigations outstanding. These include among others the reports of the analysis of the cell phone records are still outstanding. So is the report on the analysis of the vehicle tracking information of the members involved during the operations. It should be stated as well that there may be much evidence available, to which the investigating team is unable to obtain, due to non-cooperation.

Maluleke has been approached for a warning statement, but requested that written question be directed to him. This was done, but he has not yet responded. Other members warning statements are outstanding, including members from TOMS Gauteng who have not yet submitted any statement of any kind.

General Dramat also was approached for his warning statement and requested that he first consult with his legal representative. He was afforded the opportunity, but however submitted an unsworn statement in which he accused the investigation of an ulterior motive. He indicated that he will only respond if he is supplied with a "list of questions and a "proper and transparent summary of the merit and demerits" against him. He alleges that the case is a "smear campaign" against him for cases that the DPCI is involved in and requests that the **"NDPP himself and/or a duly delegated senior advocate who has not been involved in any of the matters which my unit has or is dealing with and, which have been rather controversial in recent times, be involved in decision- making process as to whether there is merit in pursuing a prosecution against me"**. He furthermore wants somebody who has **"no vested interest in the outcome of the decision against him"** to decide the matter. Although it is not clear to me which matters he is referring to, it can safely be assumed that it is a reference to among others the Mdluli matter. There may be others. The statement of Dramat is marked Annexure "C".



A further incident involving a Zimbabwe national, Moyo, who was charged in South Africa for various bank robberies was allegedly also the subject of a Rendition, this time from Zimbabwe to South Africa. This apparently happened during May 2011, after Moyo had escaped from SA to Zimbabwe. The very same Maluleke was pivotal in securing his return. This is also still under investigation.

Another unrelated incident of cooperation involving the above- mentioned CIG members are noted in the letter of commendation from Zimbabwe. It is not yet clear what assistance was rendered during this incident.

5. DISCUSSION AND RECOMMENDATION

In summary, the facts of this investigation show that a robbery incident took place in Zimbabwe, which led the Zimbabwe police to approach the DPCI to assist in capturing these suspects, who were allegedly in SA around Diepsloot and Soweto and handing over to them. It is not clear in terms of what authority the DPCI carried out the instructions as they have refused to explain their actions. In terms of the SARPCO agreement, to which South Africa and Zimbabwe have acceded to, law enforcement authorities of both countries are obliged to assist one another in criminal investigations. However this agreement does not provide for the circumventing of legal extradition or Mutual Legal assistance process provided for in law. Although there is no Extradition treaty between the two countries concerned, there are many cases recorded since 2010 to date where the countries have cooperated in the arrest and extraditing of suspects between the said countries through a legal court process. To use deportation as an alternative to following the legal process does not make the acts lawful.

The first operation (during 5-6 November 2010), four people were arrested. Two were release (although also illegal foreigners just as the other two) and the two were taken to the border and handed over to the Zimbabwe Police. Deportation documents were forged to make it look like a deportation, even though there was a moratorium against deporting Zimbabwe nationals at the time. Allegations of assault and theft of cell phones and cash are also levelled against the members

involved, in addition to the unlawful arrest and detention and handing over (which amounts to kidnapping).

The second incident occurred on 22 November 2010 when Prichard Tshuma was arrested and detained at Alexandra police station and taken to the border the following day to be handed over. No attempts to make it look like a deportation can yet be traced. It is also not certain whether the person is alive or not.

The third incident refers to the arrest of Dube and Nyoni who were both handed over to Zimbabwe police on 28 January 2011, thereby concluding all suspects sought in connection with the robbery incident in Zimbabwe. In total therefore seven people were arrested and five handed over to Zimbabwe Police contrary to a lawful process. In addition to the already mentioned charges, charges of defeating the ends of justice can be brought iro Dube's removal from the court roll and the firearm exhibit being handed to Zimbabwean Police.

Whether the evidence contained in the case docket to date is sufficient to secure a conviction is something that will have to be decided after a careful and independent assessment of the totality of the evidence. One thing is very clear though and that is that the explanation provided by the DPCI when the matter first surfaced is far from the truth as revealed through this investigation.

I trust that you will find the above in order.

Kind regards.


ADV A MOSING
HEAD: SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP

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

P17/2



INTERNAL MEMORANDUM

FROM: ADV A. MOSING
HEAD: SPECIAL PROJECTS DIVISION

TO: ADV N JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV A CHAUKE
DPP: SOUTH GAUTENG

SUBJECT: PROJECT X:

DATE: 13 FEBRUARY 2014

1. PURPOSE

The purpose of this memorandum is to provide a summary of the facts and evidence in the matter for the Director of Public Prosecutions: South Gauteng to be able to make an Informed decision regarding the prosecution of the matter.

2. BACKGROUND

The Investigations has now been finalised and a report from the IPID has been submitted for purposes of considering the merits of the case. The case docket comprising of two lever arch files, together of other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed.

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3. SUMMARY OF FACTS

3.1 The first police operation took place on the 5th November 2010 where four Zimbabwean Nationals (Victims) were arrested in Diepsloot and detained at the Orlando Police station in Soweto. The operation was conducted by DPCI Head Office and DPCI Gauteng Provincial office (TOMS). It is also alleged that they were accompanied by two Zimbabwean police officials. Members were informed during a briefing meeting that they were tracing suspects who had killed a Zimbabwean police Superintendent in Zimbabwe and that the operation was sanctioned from DPCI head office by Lt. General Dramat (Dramat) himself. The four victims were traced to an address in Diepsloot and arrested. The victims were assaulted and their properties, i.e. cell phones and cash taken from them and not booked in SAPS registers during arrest. After the four victims were booked into the cells in Orlando, one of the victims was taken out in order to trace further victims, among others a person by the name of John around Soweto. This victim could not to be traced and the other victim was returned to the cells at Orlando Police station. They were detained over the weekend as illegal immigrants and on the morning of 08 November 2010 the victims were booked out of the police cells by Col Maluleke (who was a captain by then) of the DPCI Head office indicating that they were to be transported to Beit Bridge border post. Two of the victims were released near Diepsloot and the other two were taken to Beit Bridge border post and directly handed over to a contingent of the Zimbabwe police who was waiting for these victims to be delivered. One victim was released by the Zimbabwean police after about 11 days in custody, being tortured. He later returned to South Africa where he has reported the ordeal in an affidavit and is currently kept at a safe house under witness protection. He reported that his compatriot was killed while in police custody in Zimbabwe by a hail of bullets and that he attended the funeral of the person.

3.2 The second operation was conducted on 22/23 November 2010 by the same police units. One victim (Pritchard Chuma) was arrested in Diepsloot and detained at Alexandra police station. The next day on the 23 November 2010 Warrant Officer Selepe of the Gauteng TOMS unit of the DPCI, on instructions of Col Maluleke booked out the victim and transported him to Beit Bridge border post accompanied by Col Maluleke, where he was handed over to Col Maluleke at the border and the victim has never been seen since. It is presumed that he also died in Zimbabwe

police custody. This victim was booked in at the police station under reference of a Zimbabwe police reference number.

- 3.3 A third operation was carried out by Col Maluleke with the assistance of the CIG members of Pretoria. It appears that Col Maluleke approached the Wierdabrug crime intelligence officers (CIAC) seeking information pertaining to the whereabouts of two suspects, namely Gordon Dube and Johnson Nyoni. Coincidentally the CIG of Pretoria were also carrying out a search for most wanted criminals in the Wierdabrug policing area of which Maluleke's suspects were on the wanted list. Col Maluleke requested the CIG members to assist him in tracing these suspects. The first suspect/victim (Dube) was traced by way of informers at Diepsloot on the 12th of January 2011. He was arrested together with two others in Diepsloot and detained at Wierdabrug police station on charges of Wierdabrug case dockets, which included murder, robbery, etc. He was shot by the police during the arrest and a firearm was found in his possession. It was alleged that the firearm was the very same firearm that was robbed from the Zimbabwe Police Superintendent that was killed in Zimbabwe. The two suspects arrested with Dube appeared in court at Atteridgeville court, while Dube could not appear due to being treated for the gunshot wound. The case was remanded several times and was due back in court again on the 28th of January 2011. On this day Col Maluleke instructed the investigating officer of the Wierdabrug case, W/O Meyer to release Dube into his custody so that he can deliver him to the Zimbabwean law enforcement authorities to be dealt with by them, instead of taking him to court. This was duly done. Col Maluleke also instructed the investigating officer of the Diepsloot case of unlawful possession of firearm that was seized from Dube and handed to Ballistic unit for analysis, to retrieve same from the Ballistic unit and bring it to him (i.e. Maluleke) in Pretoria. They complied with the instruction and received an acknowledgement of receipt from Maluleke. Ultimately the case of the two suspects and Dube was struck from the roll due to the court being informed that Dube was convicted in Zimbabwe and sentenced to life imprisonment and that he would never return to the SA to stand trial. Col Maluleke provided the I/O Meyer with an affidavit to this effect.

- 3.4 While the events pertaining to Dube transpired, Col Maluleke requested the same CIG members to further assist in tracing the outstanding person, namely Johnson Nyoni. Nyoni was subsequently traced also in Diepsloot on 26 January 2011 and arrested by the CIG members, working with Maluleke and the TRT unit of the

Johannesburg Central police station (who were seconded to Diepsloot police station at the time and requested by Maluleke to provide support during the operation). The victim was taken directly to the offices of the DPCI head office in Pretoria, where the members that participated in the arrest of Nyoni were congratulated by Lt General Dramat. Photographs depicting the members involved in the arrest, the victim (Nyoni), two Zimbabwean police members and their vehicle, the firearm retrieved from Dube and handed to Maluleke (still in the forensic bag) were taken by a third Zimbabwe police official at the said DPCI head office. Nyoni was thereafter booked into and detained at Pretoria Moot police station on a charge of fraud. He was then booked out on the 28th of January 2011 by Maluleke and taken, together with Dube, to the Beit Bridge border post. The entry in the registers at the Moot police station reflects that he was booked out for the purpose of extradition to Beit Bridge border post.

4. SUMAMRY OF EVIDENCE

4.1 The above facts are supported by the following evidence:

- Cell registers and occurrence books from the various police stations where victims were detained;
- Affidavits from witnesses:
 - Surviving victims
 - Gauteng TOMS members
 - CIG members
 - TRT members
 - Home affairs officials
 - Wierdabrug police officers
 - Police officials based at Beit Bridge border post
- Cell phone records
- AVL of DPCI members vehicles
- Success reports of the DPCI
- Itinerary and travelling claims of Maluleke
- Handwriting expert reports
- Documents and emails retrieved from Maluleke's computer
- Relevant dockets and court documents


H. [Signature]

5. ANALYSIS

5.1 The official version given by the DPCI to Parliament, the Civilian Secretariat of police, the Minister of Police and even Acting National Commissioner can be summarised as follows:

- that Maluleke was tracing suspects in connection with ATM bombings and other serious violence crimes around Diepsloot and Soweto in the normal course of his duties, when he arrested the first four victims in Diepsloot. He could not link them with any of the offences he investigated, but decided to detain them as illegal immigrants at Soweto with a view to have them deported. He felt they are dangerous criminals and that it is therefore incumbent upon him to ensure that they are deported and not follow the usual deportation route which is to take them to Lindela facility by Home affairs officials, but instead to transport them himself to the border. He alleged that home affairs officials were involved in issuing the deportation documents and detention warrants. He further alleges that DPCI merely transported the victims to the border and that they were handed over to immigration officers and not to Zimbabwean authorities. They further denied that they were acting on request of any request from the Zimbabwean authorities. The version entailed that all four victims were deported. No mention was made of the other arrests and rendition of the other victims, such as Pritchard Chuma, Gordon Dube and Johnson Nyoni. Despite further opportunity to provide an explanation in the criminal investigation, they have failed to do so.

5.2 The investigation raises a number of issues that shows that the official version was a mere attempt to cover up the act of rendition. Initially the DPCI conducted an investigation, which concluded with the official version given above. This was a superfluous investigation, which apparently was intended to cover up the true facts. The evidence obtained by IPID in the docket shows that a convoy of Zimbabwe police officials arrived at the Beit Bridge border post and requested permission to enter the country to see Dramat as they insisted that Dramat is aware of their coming. The evidence shows that a member at the border phoned Dramat's cell phone number supplied by the Zimbabwe police officials, to confirm and he was instructed to allow the convoy to come to Pretoria. A meeting between Dramat and these officials from Zimbabwe took place in the morning of 5 November 2010 in Pretoria at the DPCI HQ. The purpose was to request the assistance in tracing the

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uttering in respect of the home affairs documents that were submitted to the Civilian Secretariat and others.

Kind regards

Sgt.
ADV B.T. MOELETSI
SENIOR STATE ADVOCATE

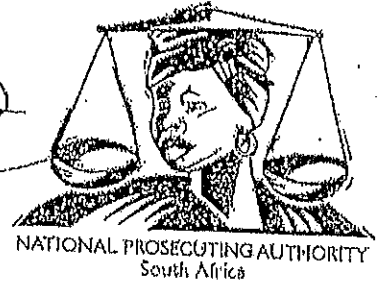

ADV A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP

ANNEXURE HIK/W 8.



C to AS HIK/W8
P17/2

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



INTERNAL MEMORANDUM

FROM: ADV A. MOSING
HEAD: SPECIAL PROJECTS DIVISION

TO: ADV N JIBA
DEPUTY NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

AND TO: ADV A CHAUKE
DPP: SOUTH GAUTENG

SUBJECT: PROJECT X:

DATE: 13 FEBRUARY 2014

1. PURPOSE

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2. BACKGROUND

The investigations has now been finalised and a report from the IPID has been submitted for purposes of considering the merits of the case. The case docket comprising of two lever arch files, together of other files containing the cellular phone data and evidence obtained from a computer belonging to the DPCI, is also enclosed.

3. SUMMARY OF FACTS

3.1 The first police operation took place on the 5th November 2010 where four Zimbabwean Nationals (Victims) were arrested in Diepsloot and detained at the Orlando Police station in Soweto. The operation was conducted by DPCI Head Office and DPCI Gauteng Provincial office (TOMS). It is also alleged that they were accompanied by two Zimbabwean police officials. Members were informed during a briefing meeting that they were tracing suspects who had killed a Zimbabwean police Superintendent in Zimbabwe and that the operation was sanctioned from DPCI head office by Lt. General Dramat (Dramat) himself. The four victims were traced to an address in Diepsloot and arrested. The victims were assaulted and their properties, i.e. cell phones and cash taken from them and not booked in SAPS registers during arrest. After the four victims were booked into the cells in Orlando, one of the victims was taken out in order to trace further victims, among others a person by the name of John around Soweto. This victim could not to be traced and the other victim was returned to the cells at Orlando Police station. They were detained over the weekend as illegal immigrants and on the morning of 08 November 2010 the victims were booked out of the police cells by Col Maluleke (who was a captain by then) of the DPCI Head office indicating that they were to be transported to Beit Bridge border post. Two of the victims were released near Diepsloot and the other two were taken to Beit Bridge border post and directly handed over to a contingent of the Zimbabwe police who was waiting for these victims to be delivered. One victim was released by the Zimbabwean police after about 11 days in custody, being tortured. He later returned to South Africa where he has reported the ordeal in an affidavit and is currently kept at a safe house under witness protection. He reported that his compatriot was killed while in police custody in Zimbabwe by a hail of bullets and that he attended the funeral of the person.

3.2 The second operation was conducted on 22/23 November 2010 by the same police units. One victim (Pritchard Chuma) was arrested in Diepsloot and detained at Alexandra police station. The next day on the 23 November 2010 Warrant Officer Selepe of the Gauteng TOMS unit of the DPCI, on instructions of Col Maluleke booked out the victim and transported him to Beit Bridge border post accompanied by Col Maluleke, where he was handed over to Col Maluleke at the border and the victim has never been seen since. It is presumed that he also died in Zimbabwe

police custody. This victim was booked in at the police station under reference of a Zimbabwe police reference number.

3.3 A third operation was carried out by Col Maluleke with the assistance of the CIG members of Pretoria. It appears that Col Maluleke approached the Wierdabrug crime intelligence officers (CIAC) seeking information pertaining to the whereabouts of two suspects, namely Gordon Dube and Johnson Nyoni. Coincidentally the CIG of Pretoria were also carrying out a search for most wanted criminals in the Wierdabrug policing area of which Maluleke's suspects were on the wanted list. Col Maluleke requested the CIG members to assist him in tracing these suspects. The first suspect/victim (Dube) was traced by way of informers at Diepsloot on the 12th of January 2011. He was arrested together with two others in Diepsloot and detained at Wierdabrug police station on charges of Wierdabrug case dockets, which included murder, robbery, etc. He was shot by the police during the arrest and a firearm was found in his possession. It was alleged that the firearm was the very same firearm that was robbed from the Zimbabwe Police Superintendent that was killed in Zimbabwe. The two suspects arrested with Dube appeared in court at Atteridgeville court, while Dube could not appear due to being treated for the gunshot wound. The case was remanded several times and was due back in court again on the 28th of January 2011. On this day Col Maluleke instructed the Investigating officer of the Wierdabrug case, W/O Meyer to release Dube into his custody so that he can deliver him to the Zimbabwean law enforcement authorities to be dealt with by them, instead of taking him to court. This was duly done. Col Maluleke also instructed the investigating officer of the Diepsloot case of unlawful possession of firearm that was seized from Dube and handed to Ballistic unit for analysis, to retrieve same from the Ballistic unit and bring it to him (i.e. Maluleke) in Pretoria. They complied with the instruction and received an acknowledgement of receipt from Maluleke. Ultimately the case of the two suspects and Dube was struck from the roll due to the court being informed that Dube was convicted in Zimbabwe and sentenced to life imprisonment and that he would never return to the SA to stand trial. Col Maluleke provided the I/O Meyer with an affidavit to this effect.

3.4 While the events pertaining to Dube transpired, Col Maluleke requested the same CIG members to further assist in tracing the outstanding person, namely Johnson Nyoni. Nyoni was subsequently traced also in Diepsloot on 26 January 2011 and arrested by the CIG members, working with Maluleke and the TRT unit of the

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Johannesburg Central police station (who were seconded to Diepsloot police station at the time and requested by Maluleke to provide support during the operation). The victim was taken directly to the offices of the DPCI head office in Pretoria, where the members that participated in the arrest of Nyoni were congratulated by Lt General Dramat. Photographs depicting the members involved in the arrest, the victim (Nyoni), two Zimbabwean police members and their vehicle, the firearm retrieved from Dube and handed to Maluleke (still in the forensic bag) were taken by a third Zimbabwe police official at the said DPCI head office. Nyoni was thereafter booked into and detained at Pretoria Moot police station on a charge of fraud. He was then booked out on the 28th of January 2011 by Maluleke and taken, together with Dube, to the Beit Bridge border post. The entry in the registers at the Moot police station reflects that he was booked out for the purpose of extradition to Beit Bridge border post.

4. SUMAMRY OF EVIDENCE

4.1 The above facts are supported by the following evidence:

- Cell registers and occurrence books from the various police stations where victims were detained;
- Affidavits from witnesses:
 - Surviving victims
 - Gauteng TOMS members
 - CIG members
 - TRT members
 - Home affairs officials
 - Wierdabrug police officers
 - Police officials based at Beit Bridge border post
- Cell phone records
- AVL of DPCI members vehicles
- Success reports of the DPCI
- Itinerary and travelling claims of Maluleke
- Handwriting expert reports
- Documents and emails retrieved from Maluleke's computer
- Relevant dockets and court documents

5. ANALYSIS

5.1 The official version given by the DPCI to Parliament, the Civilian Secretariat of police, the Minister of Police and even Acting National Commissioner can be summarised as follows:

- that Maluleke was tracing suspects in connection with ATM bombings and other serious violence crimes around Diepsloot and Soweto in the normal course of his duties, when he arrested the first four victims in Diepsloot. He could not link them with any of the offences he investigated, but decided to detain them as illegal immigrants at Soweto with a view to have them deported. He felt they are dangerous criminals and that it is therefore incumbent upon him to ensure that they are deported and not follow the usual deportation route which is to take them to Lindela facility by Home affairs officials, but instead to transport them himself to the border. He alleged that home affairs officials were involved in issuing the deportation documents and detention warrants. He further alleges that DPCI merely transported the victims to the border and that they were handed over to immigration officers and not to Zimbabwean authorities. They further denied that they were acting on request of any request from the Zimbabwean authorities. The version entailed that all four victims were deported. No mention was made of the other arrests and rendition of the other victims, such as Pritchard Chuma, Gordon Dube and Johnson Nyoni. Despite further opportunity to provide an explanation in the criminal investigation, they have failed to do so.

5.2 The investigation raises a number of issues that shows that the official version was a mere attempt to cover up the act of rendition. Initially the DPCI conducted an investigation, which concluded with the official version given above. This was a superfluous investigation, which apparently was intended to cover up the true facts. The evidence obtained by IPID in the docket shows that a convoy of Zimbabwe police officials arrived at the Beit Bridge border post and requested permission to enter the country to see Dramat as they insisted that Dramat is aware of their coming. The evidence shows that a member at the border phoned Dramat's cell phone number supplied by the Zimbabwe police officials, to confirm and he was instructed to allow the convoy to come to Pretoria. A meeting between Dramat and these officials from Zimbabwe took place in the morning of 5 November 2010 in Pretoria at the DPCI HQ. The purpose was to request the assistance in tracing the

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suspects connected with the killing of the Zimbabwe police officer. Maluleke was tasked by Dramat to carry out the operations detailed above. He made use of the Gauteng Toms during the first and second operations, but later used other units of the SAPS as detailed above. Members of the CIG Pretoria involved during the latter operations received letters of commendation from the Zimbabwean police authority as well as the Provincial Commissioner of Police in Gauteng. Maluleke seemingly was promoted as a result of his carrying out of this task.

- 5.3 It is therefor clear that the DPCI lied about the fact that the operations carried out was in response to a request received from their Zimbabwean counterparts and that it was carried out contrary to the legal process of extradition.

6. CHALLENGES

- 6.1 The suspects in this case are police officials and are adept at keeping the truth from coming to light. Much of the documentation is still within their domain as they were not cooperative.
- 6.2 The events happened some time ago.
- 6.3 The involvement of other senior police officers could not be establish beyond reasonable doubt, including the head of the DPCI Gauteng, Major General Sibiya, who it is alleged was present during the first two operations, but the evidence is not conclusive. He is also responsible for the TOMS in Gauteng and it is unlikely that the operations were carried out without his knowledge. The cell phone evidence, however, does not corroborate his presence during the operations. This can be looked at again more closely after an expert witness has been procured to analyse the cell phone data. This could not be done by the time of writing this report despite it being pointed out to the investigating team.

7. RECOMMENDATIONS

The recommendation by the IPID that the DPCI carried out an illegal deportation of Zimbabwean nationals is supported and is borne out by the evidence obtained in the docket. Those directly implicated in the actions are the head of the DPCI, Lt. General Dramat; Lt. Col. Maluleke; W/O Makoe, Constable Radebe and Capt. Nkosi. The recommendation in respect of Major General Sibiya is not supported for the reasons mentioned above. In addition to the charges mentioned in the IPID report, we would also recommend a charge of fraud alternatively forgery and

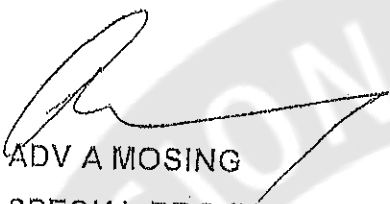
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uttering in respect of the home affairs documents that were submitted to the Civilian Secretariat and others.

Kind regards

Sgd.
ADV B.T. MOELETSI
SENIOR STATE ADVOCATE


ADV A MOSING
SPECIAL PROJECTS DIVISION
OFFICE OF THE NDPP



ANNEXURE HIK/W 9.



ANNEXURE HIK/W9

**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 Sibya.

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.

- 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 Mhethwa.
- 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

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

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 Nhlamu 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 Matuleke 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

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.

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.


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 labulated 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.


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- 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.

- 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

- 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."

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
LEONUM PARK
20 WATERMELON STREET
POLOKWANE B.S.A.

AREA


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ANNEXURE HIK/W 10.



HIK/W10

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GEORGE BALOYI
SIBONGILE MZINYATHI

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

Interview with:

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SIBONGILE MZINYATHI

and

GEORGE BALOYI

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PRESENT:	MR SIBONGILE MZINYATHI	- DPP
	MR GEORGE BALOYI	- DPP
	MR SANDILE JULY	- Director, Werksmans
	MS KERRY BADAL	- Associate, Werksmans
	MR SANDILE TOM	- Associate, Werksmans
	MR KWAZI BUTHELEZI	- Candidate Attorney

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17 April 2015

MR JULY:

My name is SANDILE JULY, I'm from WERKSMANS, and today is 17 April 2015 at the offices of the DPP in PRETORIA, with ADV MZINYATHI and ADV BALOYI. I'm with SANDILE TOM, an Associate from WERKSMANS, KERRY BADAL, an Associate from WERKSMANS, and KWAZI BUTHELEZI, a Candidate Attorney from WERKSMANS.

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Mr Mzinyathi, we have given you the background, and told you what MR CHAUKE told us about the

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docket, when he received it, and it was taken away from them by KHUBA and a certain MR ANGUS from IPID. The docket was returned to the NDPP office, and according to CHAUKE when they enquired about the docket, they were told that the docket was never intended to be returned to his office. Then it was advised by the NDPP to close his file, therefore he was not going to deal with the matter anymore.

In December, when he was called by the NDPP about the same docket, he refused to accept the docket back because he had already decided to close his file, as per the advice of the NDPP. On 1 April this year, he found in his office a box, which was closed - sealed - to be opened by him only. Inside that box were arch-lever files, including a letter addressed to him dated 13 March 2015. In a nutshell what it said was that the DPP of NORTHERN GAUTENG, which is ADV MZINYATHI, has made a recommendation that DRAMAT and the others

should be prosecuted. But in the letter he is requesting the DPP of GAUTENG, which is MR CHAUKE, to make a decision, after consulting with him as to whether prosecution should take

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place on that. That's the summary of the letter, but there are other issues contained in that.

Mr Mzinyathi, you are supposed to tell us about your involvement in the matter.

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MR MZINYATHI:

Thank you. The week before 13 January - and I don't remember the exact date, but I was still on leave - I got a call from the NDPP who enquired from me about my knowledge of the Renditions case. I told him that I know nothing at all. Before then I had not been involved in any way with this matter. He then told me he was going to forward the matter to me, because he had received it from ADV CHAUKE, and he told me the reason why he intended to give it to me, was because it transpired to him that DIEPSLOOT, which is the area in which some of the incidents occurred, falls under my area of jurisdiction.

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MR JULY:

I will keep on interrupting you. I just want you to confirm that he said he received it from ADV CHAUKE?

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MR MZINYATHI:

Yes.

MR JULY:

Which is not correct, because the document was taken from MR VAN ZYL. As I indicated to you

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when we started recording, it was taken to him by MR VAN ZYL by two people, which is KHUBA and ANGUS, and it never went back to CHAUKE.

MR MZINYATHI: In other words is your question that he got it from CHAUKE personally?

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MR JULY: No, my question is did he get it from CHAUKE personally or from the office of CHAUKE.

MR MZINYATHI: Look, from my recollection I think he actually sent it from CHAUKE, but from my point of view I really don't know whether anything much turns on that. 10

MR BALOYI: It might have had a very long turn, but eventually what it means is it ended up on his table.

MR JULY: I will tell you that it is critical for our purposes, and I will tell you why. We need to know exactly what happened to the docket. That's one thing. Everything turns on that, as to who gave him the docket. Because our understanding is that the docket came from IPID back to his office. 15 20

MR MZINYATHI: Oh, I see. Then I follow what you are saying. Well, the information that he got it from CHAUKE - as I said a couple of minutes ago, because DIEPSLOOT is my jurisdiction, he said 25

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GEORGE BALOYI
STRONGILE MZINYATHI

I must have a look at this matter. I told him that in the NDPP I was on leave, but I was going back to work on Tuesday, the 13th. Indeed on the 13th I was here, and the docket came in a sealed box, with a covering letter. 5
I think the docket constitutes five or six lever-arch files - the docket itself - with several fives of annexures and exhibits. What I then did, and even before talking to ADV MARAIS, was to read that docket myself, and I 10 made comprehensive notes, which are these, off the original of the docket. I think I took about a week to read this docket, because I was reading it amongst the many other things that I had to do. Then I called one of the most 15 senior deputies, ADV BALOYI, and said: George, I allocate this matter to you, go through this docket, and when you are done let's discuss it. I must mention that from time to time, as he was reading, ADV BALOYI would give me some 20 verbal updates. I still remember, for instance, if he had made a call to the investigating officers, he would tell me, because I kept on enquiring from him: What is the progress in the matter? 25

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GEORGE BALOVI
SIBONGILE MZINYATHI

In one of the files that was delivered with the docket to me on the 13th, I must confirm that I saw the report. I think this was the last report - the red one - the one

MR TOM:

It's the one dated 18 March 2014?

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MR MZINYATHI:

Yes. It was part of the docket, it was an annexure. Then I was careful to finish reading that docket before reading the report. When I read the report, for me it was very, very useful, because in a very detailed way the report goes a long way to summarising the statements. Every statement in the docket is summarised in that report. I must say that helped me to cross-reference with my notes about whether I had captured a certain statement correctly. I do observe that the report concludes by making its own recommendations about who should be charged and who should not be charged. 15

While all of this was happening, I was not aware that there was anything called a first report. In fact it came to our attention, George, much later - I think after about a month - that there was a first report. That happened over the news, or something like that, 25

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SIBONGILE MZINYATHI


and we were all surprised there was a first report. I then went to visit the NDPP on a date which I don't remember for a matter unrelated to this matter.

MR JULY: That was more or less when? Was it before ... 5

MR MZINYATHI: No, before. This was definitely before our recommendation. He then told me: By the way, there is a first report here, have you seen it? I said: No, I was not aware that there was a first report. He then made me a copy, and this 10 is the copy that my colleague, GEORGE, just showed you now, the one with scribbling on the cover. I did not read that report in any amount of detail, but on a cursory observation my point of view was that the summary of the 15 statements was basically the same. Of course, as it has now become well reported, its recommendations differ from the second report. I gave it to GEORGE. In fact at that time the docket had already been with GEORGE for some 20 time. I had finished reading the document myself.

MR JULY: Did he tell you whether he was in possession of that report when he gave you the docket?

MR MZINYATHI: I did not ask. As I was reading this document, 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

I was formulating conclusions or views in my mind, but I kept those to myself because I was waiting for GEORGE to come to his conclusion. Eventually then GEORGE came here - I think let me point out that as he was reading it, GEORGE from time to time would say: The DPP - I think this is where the case is going, in terms of his own reading. He eventually came up with recommended charges. GEORGE is going to talk about that at length.

MR JULY:

Did you share the new report with GEORGE?

MR MZINYATHI:

Yes. As soon as I received it - I didn't keep it for a long time. As I say, from my point of view I didn't even read it in any amount of detail, but just paged through it. It basically looks like the same report in terms of how it summarises the statements. The only difference is towards the end, with the recommendations.

Then GEORGE, after reading the report and having discussed the matter with me from time to time - I still remember on certain occasions in relation to one charge, for instance, we would debate whether this was a conspiracy, was it common purpose - all those things, because

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SIBONGILE MZINYATHI

we are prosecutors, and we were looking at it from that point of view, until we came to the charges we thought should be brought.

Now, why a recommendation and not a decision?

It's not as if this is something that we did not sort of think carefully about. You are aware, Mr July, that this is a DPP office, and we make decisions every day to prosecute. Under normal circumstances - and I'm sure this is what GEORGE is also going to confirm - we would simply have decided this matter. But the reason why is as things now stand DIEPSLOOT does not fall under my jurisdiction. 5 10

MR BALOYI:

That's from 1 December 2014.

MR JULY:

In actual fact what he says in the letter to CHAUKE, is that now that the matter falls under the jurisdiction, then you can decide the matter. There is a contradiction there, in the sense that CHAUKE was seized with the matter, even when it was not under his jurisdiction. So you can't then say you are taking the matter to CHAUKE in spite of a recommendation, simply because it now falls under his jurisdiction. You can't use jurisdiction as a reason. 15 20

MR MZINYATHI:

You see that's a matter for you to determine. 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

In terms of the Criminal Procedure Act - and I'm sure we are all aware of it - I can only decided for another DPP if jurisdiction has been transferred. There is a specific section in the Criminal Procedure Act where the NDPP 5 transfers jurisdiction to another DPP.

MR JULY:

Yes, yes.

MR MZINYATHI:

In such a situation I become seized with the matter as if I am the DPP of first instance, and then I can decide. We were constrained in 10 this matter - and we were careful, Mr July, because inasmuch as DIEPSLOOT was under my jurisdiction where offences were committed, at the time we were making a decision I didn't have jurisdiction over DIEPSLOOT. 15

MR JULY:

But do you know why that jurisdiction was not transferred, if we take your argument to its conclusion, which is that there can be a transfer of jurisdiction, even after the first, logically the NDPP had the power to say: I am 20 transferring this to you.

MR MZINYATHI:

Yes.

MR JULY:

And that didn't happen?

MR MZINYATHI:

No, it didn't.

MR BALOYI:

Actually at some point we were contemplating 25

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SIBONGILE MZINYATHI

returning the docket to the NDPP to say: It doesn't fall within our jurisdictional area. It had the MUSINA leg, and obviously the matter had a chequered history, and we felt let's just make a recommendation at least.

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MR MZINYATHI:

So I think I have clarified or I have attempted to clarify why we chose the recommendation. You know, if you have a look at that recommendation even the style in which it is prepared, it is prepared in the style in which we normally make decisions. It's just that instead of saying the DPP decides, we say: It is recommended.

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MR JULY:

But in any event you were recommending a decision. It's not like you didn't make a decision.

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MR MZINYATHI:

No, we did.

MR JULY:

You made the decision of recommending to them, meaning that: We are not imposing ourselves, you can still decide, but your decision that you recommended was that.

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MR MZINYATHI:

Yes.

MR JULY:

So the issue of recommendation becomes too difficult.

MR MZINYATHI:

Yes. After having done that - and this is also

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SIBONGILE MZINYATHI

another issue that I think is being questioned in some quarters, certainly if one takes what one reads in the newspapers to heart, because there is also apparently a school of thought that says: Why did I even return the docket to the NDPP? The same answer I'm giving you is going to hold, because if it was a decision we would have taken the docket to the police with the decision. But because it's a recommendation it goes back to where the docket came from, so that it can either be taken to the police, or he can then say to us: I have read your recommendations and you can maybe decide on the matter. It is at that point where, if we had been called upon to decide, we would have raised the issue of jurisdiction. Isn't that so, George?

MR BALOYI:

Yes.

MR MZINYATHI:

At that time we would have requested: Please transfer your decision, but then the matter went there on 13 March. Can I pause for now?

MR JULY:

So that was in March, when you made your recommendation?

MR MZINYATHI:

The recommendation was made a few days before that. 13 March is the date of the memo that

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SIBONGILE MZINYATHI

forwards the recommendation, together with the docket, to the NDPP.

MR JULY: Would you be so kind as to give me that mail? We've got the answer from the NDPP, where he is...

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MR MZINYATHI: Have you spoken to him already?

MR JULY: Who?

MR MZINYATHI: The NDPP?

MR JULY: No, not yet. We've got the memo that he sent to (?).

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MR MZINYATHI: Okay. I don't think we've seen that.

MR JULY: "YOUR LETTER DATED 24 MARCH:

The matter is duly referred to the NDPP in terms of (indistinct) the NDPP. I duly referred the matter to the appropriate DPP, Advocate Mzinyathi, who made a recommendation and since referred the matter to the head of NPS to advise on the way forward.

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I am duly seized with the matter and will return the case docket to the appropriate authority once a decision has been made. You will be informed in due course."

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But all that he says here, he does accept that you made a recommendation.

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GEORGE BALOYI
SIBONGILE MZINYATHI

MR MZINYATHI:

Maybe for completeness' sake I think I need to mention this. I have not mentioned it yet, I thought it was going to come later, after GEORGE. It will be clear from my notes, if you have the date - and I will give it to you later 5
- what happened after the 13th is that I got a call. I am reminded of this by the heading of this letter. I got a call from a guy who I think is the Staff Officer of GENERAL NDLALEZI(?), a certain COLONEL KWAI(?). 10
COLONEL KWAI said to me: Can you please confirm your email address for me, because I want to send a letter to you from the head of the HAWKS, and I'm not sure of the email address. In fact he actually told me that he 15
had been attempting to send emails, and they kept on bouncing back, so he thought he was not getting my email correct. I then said to him: Okay, give me your email address, I will forward a blank email to you, which you will 20
use to respond to. I then received a letter from MR NDLALEZI, enquiring about what had happened in this matter. MR NDLALEZI's letter is here?

MR BALOYI:

Yes.

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GEORGE BALOYI
SIBONGILE MZINYATHI

MR MZINYATHI: Can you please find it for me quickly?

MR BALOYI: I think this is a response to the letter. No, this is from the attorneys.

MR MZINYATHI: This letter is actually a very, very interesting letter, and I think just for 5 purposes of completeness it will become clear. This letter says:

"NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS: ATTENTION S MZINYATHI."

MR BALOYI: Here it is. 10

MR MZINYATHI: Thanks. It's a letter from the HAWKS of 18 March. NDPP, ATTENTION S MZINYATHI.

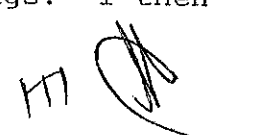
MR JULY: This is 18 March?

MR MZINYATHI: 18 March, and this is a letter I received immediately after I had confirmed my email 15 address from COLONEL KWAI. I then forwarded this letter of the HAWKS to the NDPP in a letter dated March, and this letter is actually very, very simple, it's three lines.

"Dear NDPP 20

Please find attached hereto a letter dated 18 March from the head of the DPCI, the contents of which are self-explanatory."

This letter requests me to do things. I then 25

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say in my letter of 19 March:

"In response to the request contained in the aforementioned letter, I confirm that this office made a recommendation in this matter, which was forwarded to you together with the docket on 13 March for consideration and feedback."

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I sent this to the NDPP via email and hard copy. Then after enquiring, the NDPP wrote to us - George?

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MR BALOYI:

Yes.

MR MZINYATHI:

They wrote to us, questioning why I had forwarded this letter - this response to MR NDLALEZI as well. Because what I did was to write to the NDPP and copied MR NDLALEZI, who is the author of the request.

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MR JULY:

The letter you are referring to now is dated what?

MR MZINYATHI:

The letter I received is dated 18 March.

MR JULY:

No, the one that you sent to MR NDLALEZI?

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MR MZINYATHI:

My response to the NDPP is dated 19 March, the following day.

MR JULY:

Oh, so you are responding to the NDPP: I have received this letter from ...

MR MZINYATHI:

Yes.

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SIBONGILE MZINYATHI

MR JULY: ... and then you CCd him?

MR MZINYATHI: Yes, exactly.

MR JULY: Now he wants to know after the 19th, when you do that, why you CC'd NDLALEZI?

MR MZINYATHI: NDLALEZI.

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MR JULY: But what is wrong with that, because it's a letter addressed to you, and now you are saying: Listen, Mr Ndlalezi, I think this should be directed to somebody else.

MR MZINYATHI: Yes.

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MR JULY: And you are therefore advising him: This is where you should go.

MR MZINYATHI: Exactly. In fact that is precisely how I had approached it. I didn't want to waste time writing many letters to the NDPP, and then another letter to NDLALEZI to say: I have forwarded this thing. One email or one memo, in my view - and I think it's a view that makes sense as I sit here.


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MR BALOYI: But these are the internal workings of the NPA. I suppose they do not form part of your investigation.

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MR JULY: You see, we are where we are now because of the internal workings of all these institutions, IPID, the NDPP. Actually the whole issue is

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SIBONGILE MZINYATHI

centred around the workings, because it is
through the workings that these things happened
in the way which has lead to this investigation
now. The relevance of certain things - and
whether they are relevant we will make that 5
judgment call, as to what is the relevance of
the letter from NDLALEZI to MR MZINYATHI,
and Mr Mzinyathi, if it does not add
any value to our conclusion we will leave out
anything that has no relevance. But what we 10
need to appreciate is the fact that this whole
thing is centred around how the NDPP handled
the matter; how the docket moved from one
place to another place, and what the reason was
for the movement of the docket. Do you get 15
what I'm saying.

I understand what you are saying there, but we
are not here to deal with the general
administration. Here we are being specific.

MR MZINYATHI: You see, the reason why I made reference to all 20
these things is because of this letter. This
letter creates a nexus to these communications.
I could not simply have kept quiet after you
had showed me this letter.

MR JULY: I think what needs to be clear to all of us 25

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SIBONGILE MZINYATHI

here is that we are not here to investigate the administrative operations of the NPA. This is a specific assignment: What happened after the report, and the coming of the second report, and the docket. For instance, what we do know 5
is that MR MZINYATHI was given a report - a report which was dated March, where the docket that was with MR CHAUKE did not have a report dated 18 March, it only had the report of 22 January, because it was handed to him in 10 February. Do you get what I'm saying?

MR MZINYATHI:

Mmm.

MR JULY:

So it is through that administrative process that we will be able to come to a conclusion as to why things happened in the way in which they 15 happened.

MR MZINYATHI:

I think that concludes - of course, I responded to the question to say: Look, I copied Mr Ndlalezi because the letter was actually addressed to me, and I was not under any doubt 20 that I was the intended recipient, because the person had called me and said: Confirm your email address.

MR JULY:

So you came to a conclusion, and you sent a recommendation, but your recommendation is 25

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SIBONGILE MZINYATHI

stated in the letter of 1 April, which letter I have seen, where the NDPP writes a letter to CHAUKE saying you have recommended prosecution of several people. Again, who is NPS? The NATIONAL PROSECUTION SERVICE, what is that? .5

MR MZINYATHI: NPS is a business unit at VGM, at head office, which is responsible for prosecutions in the divisions. Let me put it this way. There are four business units in the NPA. You've got the Asset Forfeiture Unit, you've got NSSD - National Specialist Services Division, or something like that, you've then got the NPS, which is the National Prosecution Service, and then the fourth one? 10 15

MR BALOYI: Corporate Services.

MR MZINYATHI: You've got the four deputies: NPS, Asset Forfeiture, NSSD and then there is the LAD, the Legal Affairs Division. Now, the NPS is the business unit which is responsible for the DPPs. All the DPPs report to the head of the NPS. 20

MR BALOYI: And as the name says, it's responsible for prosecutions.

MR MZINYATHI: Yes, if you want to distinguish it for instance 25

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from asset forfeiture and other issues.

MR JULY: This letter is dated 27 March. Anyway, that's fine.

MR MZINYATHI: I think now we can give over to GEORGE, because, as I say, GEORGE spent a lot of time working with this document. 5

MR JULY: You see with GEORGE - the other thing is if we speak to GEORGE now we are talking about the merits of his findings. You made mention of the fact that you may have the two reports, and they looked the same. Have you ever looked at the report later on - the other report which was given to you later by the NDPP? Have you ever looked at it to do the comparison? 10 15

MR BALOYI: The first report, yes. I remember when we were conferring here, and that was more or less at the stage, as the DPP mentioned. I think we conferred on two occasions. The first time around - and then we went away and just refined the charges in light of our discussions and our final deliberations. I think that's when the NDPP said he received a parcel the previous Friday. I think you met on a Monday, and you mentioned that you received a parcel - I think 20 25

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you were not here that Friday, and I think you mentioned that it was delivered to your PA. As we were deliberating, I think you then opened that parcel and it turned out to be that first report, if my memory serves me well.

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MR MZINYATHI:

They were clear what decision to make based on the second report, without reading the first report.

As I say, I didn't think it was important to have detailed tracking of these events at the time. But one thing is for sure, that when we got the first report we had almost reached a stage where our mind was clear about this thing. In fact GEORGE told me that he didn't even read the report.

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MR JULY:

We will just demonstrate to you the differences between the two reports.

MR MZINYATHI:

Okay, please.

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MR JULY:

We have been asked as well whether there is a *prima facie* case, which means that we must decide, based on the information which is in the docket - the information that is before the two sets of people - is there a *prima facie* case to be made against those people. Whether we will be confirming what you have said, or whether we'll be saying there is no *prima facie* case, that will come later, but we have a view.

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Already we have our own view about what should

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have happened.

Adv Baloyi, you then looked at the documents -
the docket itself.

MR BALOYI:

Yes. I got the docket from the DPP I think
around 22 January or thereabouts. I have been 5
looking for the note that the DPP made, and I
can't find it, but he made a note to say:
George, please read the docket and let's
discuss it when you have finished. I would say
it was around 22 January or thereabouts. I sat 10
slogging through the docket, and it took me a
while because in between I do other work. But
from time to time, as the DPP mentioned, I
would get an impression about the case, we
would discuss it, and so it went. I must say, 15
from the beginning, when I received the docket,
as the DPP mentioned it had this email report -
the second report. But I never had a look at
the report, and I mentioned to the DPP that I
might be taking a radical view - there is so 20
much made about the first and the second
report, but I don't look at reports. That's
not evidence. When I read the docket I'm
looking for admissible evidence. These reports
are not evidence and they are not going to be 25

*Reports
is not
evidence
Mkandawane
ignores
this information*

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tendered in court. You can't tell the court:
Based on this report, I have decided this. And
that's why I decided that I wanted to look at
the matter with an unencumbered mind, and
that's precisely what I did.

5

For our purposes reports help only just to have
a record at our offices, in case someone phones
after we have made our decision. You can
quickly go to the file, and say - it's a
summary basically, and it helps us in that way.

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Firstly, as I said, the reason why I didn't
look at it, I wanted to look at it with a clear
mind. Secondly, I didn't know what the person
who compiled the report was looking at. His
summary of the evidence might be defective, and
certain issues I would want to look at he might
have overlooked. For instances, these reports

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were authored in January and March last year,
and we're looking at the docket almost a year
thereafter. Obviously a lot of water would
have gone under the bridge in the meantime. So
it's sort of updated. But I moved from the
premise that I was going to look at the matter
with a clear mind, and I read the docket from
the front cover to the last page, without

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The reports
could not
have influenced
NPA about
their decision

looking at the report. Actually to this date I have hardly looked at the report. The only time, when we were deliberating with the DPP before we made our final recommendations, when he mentioned that he received the first report, I said: Out of interest let me see what the final recommendation was. That was after we had already decided on our recommendations. I just said: Out of interest let's see what the recommendation was. I just say coincidentally the recommendation sort of dovetailed, even if not in precise terms, but to a great extent there is a confluence between our recommendation and the report. 5 10

I read through the docket, and at some point I felt I had broken the back of the evidence. That was around 23 February. I took much longer. I think the DPP spent about a week or so on the docket, but I took much longer. Mostly I was reading the docket after hours and at home, because during the day it's very busy. I deal with representations, so during the day you get members of the public coming to your office. So the only time to read the docket was after hours and on 15 20 25

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weekends. On 23 February I called the IO to say I had been looking at the cold facts, and I just needed someone who had lived with this document for a while to give me first-hand information.

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MR JULY:

Who is this IO?

MR BALOYI:

I just said I wanted to see if we were on the same page, and whether my understanding of the evidence was on par with his.

MR JULY:

Who is the IO?

10

MR BALOYI:

It was KHUBA. I called him and said: There are a few statements that I want you to have a look at. That related mainly to the progress reports. There are progress reports in the docket, and I could see that LIEUTENANT GENERAL DRAMAT was copied on those progress reports. I wanted the people who authored those progress reports to make statements, mainly just to see if those progress reports came to the attention of LIEUTENANT GENERAL DRAMAT. We agreed to meet on 3 March. Indeed he came on 3 March, and he was accompanied by one MR VICEROY MAOKA, who is a former prosecutor. Apparently he is in their litigation section.

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Maybe before I get to that, during the

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telephone conversation on 23 February, KHUBA mentioned that they had asked for an opinion from senior counsel, BARRY ROUX. I said: Oh, that's interesting. There were certain issues that were uppermost in my mind, 5 and I said: What was BARRY ROUX's view on this and that? He told me what BARRY ROUX's views were.

MR JULY:

Did he say when he asked for that?

MR BALOYI:

I think he did, and it must have been around 10 January or so, but I can't say that with any amount of certainty. But he did mention that they went to seek opinion of senior counsel. He came on the 3rd, as I mentioned, with MR VICEROY MAOKA. We sat in my office, and I 15 said: Please take me through the docket. What bothered me, was I would have liked to consult with the eye witnesses, the guys from ZIMBABWE, just to sort of assess their credibility and the credibility of their evidence. The only 20 person who could do that was KHUBA, because he took their statements and talked to them. So I wanted to gauge the reliability of their evidence, and also what his impressions were as far as certain evidence is concerned. 25

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You see, the big problem in this case is that one of the important witnesses, COLONEL MADILONGA, has passed on. I debated certain issues with him, just to find out, should we decide on a prosecution, if there is a way that we can get other reliable evidence. I wanted to hear from the horse's mouth how we could close this big gap that has been left by MADILONGA. We went through the docket. The other issue I wanted him to give me clarity on is the version of former Acting Police Commissioner, NTLANTLA MKHWANAZI. He called DRAMAT at some point, and DRAMAT made an admission to him, that yes, he is aware that his guys took some people through the BEIT BRIDGE border post to ZIMBABWE. I wanted more on the circumstances surrounding that admission that DRAMAT made to MKHWANAZI. Actually I asked him to bring his LIEUTENANT COLONEL - I cannot remember his precise rank, but I said to him: Please see if you cannot get GENERAL MKHWANAZI here; let me just get from the horse's mouth what the discussions were with DRAMAT. But he told me that he couldn't get that right. So we went through the docket, and

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I think I did ask him as to the first report, because at that point we only had the second report. He promised that he would send it, but I never received it. I never received it. After that I made my own notes and met with the DPP. We had our first round of discussions, I told him what my feeling was about the matter, based solely on the hard facts. We debated certain issues, I went away, looked at those issues and presented him with the final recommendations. That's how we came up with these recommendations. 5 10

Along with our recommendations we sent the NDPP a brief memo motivating why we think a prosecution should be instituted. On 13 March we sent the docket with our recommendations and the memo. 15

MR MZINYATHI:

George, should we not talk about the letter that also (?), because that's very important.

MR BALOYI:


Oh yes. On 10 March I was at a conference at EMPEROR's. I think I saw about four or so missed calls on my phone from the IO. That was on 10 March. It was clear to me that he was desperately trying to get hold of me. When I went through my emails in between the 20 25

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conference - I think at lunch, or when we were
done - actually I tried to call him. Before
that I sent him a message to say: I'm in a
conference, as soon as I get an opportunity, I
will call you. Which I did, just after 16h00, 5
but he didn't pick up. I think I tried him
twice or thrice. When I got home, as I was
going through the emails, I saw his email, and
he was referring to our discussions on 3 March.
But what surprised me, obviously I put certain 10
scenarios to him, to say: What if Scenario A
eventuates? Let's say we decide to prosecute
X, this is the evidence we have against him, if
we decide to prosecute Y, this is the evidence
we have against him, and what is your comment? 15
On 10 March he sent me a very strange email,
saying he understood the different scenarios I
was putting to him to mean that that was the
decision. I'm just looking for that email that
he sent. 20
I then knocked off an email to him, and said:
Look, you misunderstood me when I was debating
the various scenarios. Those were not cast in
stone, those were possibilities. We then
received a letter - hence I said I don't really 25

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want to dwell too much on the internal workings of the NPA. Anyway, we received a letter from the NDPP ...

MR JULY:

Before that, that email that was sent by KHUBA was questioning the manner - he thought that you had already made up your mind. 5

MR BALOYI:

Yes, he referred firstly to the telephone conversation that we had on 23 February. Because as I mentioned, he indicated to me that they obtained an opinion from senior counsel, and I was more interested in knowing what senior counsel said, especially around the fact that MADILONGA had since perished, and how could we fill that lacuna in the evidence. He told me what BARRY ROUX's views were, and on other matters as well. 10 15

Then in this email of 10 March he referred to the telephone conversation we had on 23 February. He said: This is what you said, and he then referred to the discussions we had here in my office on 3 March. He said: This is what you said. He seemed to indicate that I had changed my decision. I then sent him an email on the 10th, responding to his own email. 20 25

I said: Look, I think you misunderstood me.

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SIBONGILE MZINYATHI

When I was debating the various scenarios with you, it doesn't mean a firm decision had been taken. All I wanted was for you to tell me what your views are, and what evidence there is to sustain that particular scenario. We then received this letter on 31 March from the NDPP. It appears that these two gentlemen went to the NDPP to complain. Amongst other things they said - I told them there were certain issues that were outstanding, which needed to be investigated: the question of the cellphone records. When we discussed with the NDPP, already he mentioned the death certificates. In my discussion with them we mentioned the possibility of getting a statement from the prosecutor who withdrew the charges in ATTRIDGEVILLE - as to on what basis he withdrew the charges, and was there any Interpol warrant at that stage? So I said: Look, this thing has become urgent, it's in the news, and for the purposes of making a prosecutorial decision now we need to have these outstanding issues completed before we make a prosecutorial decision. I said: I will sit down and make a list of all these issues that are outstanding,

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and I'll give them to you.

They went to the NDPP, and he said I promised to send them a list of outstanding issues, and I haven't fulfilled my promise. In the email that he sent me on 10 March, he also mentioned 5 that I promised him a list of outstanding issues. I said: I will give it to you as soon as I get a chance to put pen to paper. They went to the NDPP and complained that they hadn't received a minute with the list of 10 investigations. They made sworn statements - both of them - basically saying that I seem to have taken a certain line with the first telephonic conversation on 23 February, and that in the consultation on 3 March I seem to 15 have deviated from that. He also made all sorts of ...

MR MZINYATHI:

He went as far as saying that on 23 March (sic) GEORGE went out and came back with a changed view, saying that this is the view of the DPP, 20 which is something that I frowned upon.

MR BALOYI:

They say I told them I wanted to consult with the DPP, which is wrong. I went to the bathroom. We started consulting at 09h00, and at about lunchtime I said: Gentlemen, I just 25

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need a comfort break. I went to the bathroom, and when I came back I bumped into the DPP and said: The IPID guys are here, I'm consulting with them.

MR JULY: Would there be anything wrong if the DPP had a view? 5

MR BALOYI: Well, I don't think it would be wrong, but what they are saying here is completely incorrect, because they say here I went out, and when I came back I said that DRAMAT must be charged, and that we will have to bite the bullet, something like that. 10

MR JULY: You see, this KHUBA guy is - we discussed it, and I find it very strange that KHUBA would think that an opinion expressed by anybody else about the charging of DRAMAT would have been influenced by things other than what was before him. Because from what was before him at the time, on 22 January, he came to that conclusion: that DRAMAT must be charged. Right? He then says to us he engaged SESOKO. SESOKO is... 15 20

MR TOM: ... the National Head of IPID.

MR JULY: ... the National Head of IPID. He was acting at the time. He engaged SESOKO, SESOKO is a 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

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former prosecutor, according to KHUBA, who has legal knowledge, and who influenced him otherwise. He influenced him otherwise, and again the issue is around the cellphone.

This new information, we are told, is about 5
cellphones. But what we do know, and what he doesn't know that we know - although we told him that we know - is that this so-called new information was there. It was there even before the influence he claimed 10
happened.

MR BALOYI:

Actually, MOSING, as I mentioned ...

MR JULY:

Yes, he makes reference to the cellphones.

MR BALOYI:

That was in February last year already.

MR JULY:

Yes. 15

MR BALOYI:

He made reference to it.

MR JULY:

So that information about cellphones was there.

He then says, as we were talking: You know, now that you are saying it - and that is me now talking to him - I think SESOKO influenced me 20

incorrectly; he was wrong. Knowing what I know now, I would stick with my decision that I took.

MR BALOYI:

The initial decision?

MR JULY:

The initial decision. That's what he said. 25

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GEORGE BALOYI
SIBONGILE MZINYATHI

But when we said: Let's go through the record,
your own report, where is this new information?
This new information is pieces of two or three
statements, a sworn statement from SIBIYA,
which does not say anything, from DRAMAT, which 5
does not say anything ...

MR BALOYI:

Yes, it's more about his struggle credentials.

MR JULY:

And the fact that he did not give any illegal
authorisation. He is not disputing the calls
that MADILONGA referred to, he does not dispute 10
the photos that were sent to his PA, he does
not dispute the meeting that took place
congratulating those guys, and he does not
dispute having received the success report.

MR BALOYI:

Actually now that you mention it, Mr July, I 15
think during our conversation, when he
mentioned that he spoke to BARRY ROUX, he said
BARRY ROUX amongst others said: Please go back
to DRAMAT and let him comment on all these
issues, especially that congratulatory meeting, 20
and the meeting with LIEUTENANT COLONEL
MKHWANAZI.

MR JULY:

But it's very strange that you now would be
required to have more information to come to a
conclusion, when other people, including him, 25

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SIBONGILE MZINYATHI

based on the information they had before them, came to a conclusion - whatever conclusion. Why is it not possible for another person to come to some sort of conclusion on the same information that is before him?

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MR BALOYI:

Yes.

MR JULY:

Why do you need additional information for you to come to a conclusion? Here are the two reports. Let's assume that they both stand, they both have conclusions based on the information that was before you. Remember these things were concluded in February and March so everything that they saw is before you. Why would you then need this outstanding information for you to come to a decision of some sort?

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MR BALOYI:

Anyway, I made it clear to them that for a prosecutorial decision we could acquire the outstanding information at a later stage. But I felt that those matters could not stand in the way of us taking a decision. We then say those were loose ends that needed to be tied up before we go to trial.

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MR JULY:

In any event we are meeting with this guy at 12h00. I think we are finished. We are happy

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SIBONGILE MZINYATHI

with the response we are getting, but just for completeness' sake, so that you know the report - I'm not saying it's going to make any difference, instead it confirms that there is certain information that was removed to justify a different conclusion. The report looks the same, you're right, word-for-word up to page 9. If you go to page 9 ...

MR BALOYI:

Of which report?

MR JULY:

Page 9 of the 18 March report.

MR BALOYI:

The second one?

MR JULY:

Yes. It will be page ...

MR BALOYI:

Actually, we had a look with the DPP.

MR JULY:

If you look, there is ALFRED NDOBE on page 5. No, I'm on the wrong page, sorry. Page 9.

MR BALOYI:

Of the second report?

MR JULY:

The second report. If you look at page 9 of the first report and page 9 of the second report, you will see where a paragraph on page 9 of the first report starts with: "He will state", and it's after the paragraph ending with "suspects".

MR BALOYI:

"General Dramat to assist them in tracing the suspects."

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SIBONGILE MZINYATHI

MR JULY:

Yes. After that it's supposed to say:

"He will state that he told Superintendent Ncube that he has to verify with his seniors about the arrangement."

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That paragraph has been removed in the second report. If you go to the second report, where it talks about "in tracing the suspects", after that:

"For the period of two weeks ..."

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That "For the period of two weeks" on page 9 of the first report is there.

MR BALOYI:

So they omitted this.

MR JULY:

They omitted this because it makes reference to DRAMAT and about the meeting. They have removed that and about having a meeting with the ZIMBABWEANS.

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MR BALOYI:

"He then called him on his cellphone 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 ..."

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It's the senior of MADILONGA. He consulted two of his seniors, I think.

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SIBONGILE MZINYATHI

MR MZINYATHI: But what I'm seeing is the statement of
MADILONGA.

MR JULY: Yes, it's his statement. You change a person's
statement and you don't say why. You can come
up with a summary, but if your summary - if the 5
new report, the so-called second report of 18
March is a new report, you will draft the
statement. You can write it differently, but
here there is a deletion of information. Then
you can go to another page ... 10

MR BALOYI: MADILONGA is no more.

MR JULY: You know why it is important for our purposes?
Our purpose is to demonstrate ...

MR BALOYI: Yes, the change.

MR JULY: ... that for you to come to a different 15
conclusion, using the same report, the
inconsistency of the evidence and the
conclusion - so for you to come to a different
conclusion, you need not to have certain
evidence or information included in your 20
report. Otherwise you can't have the same
report and come to a different conclusion.

MR BALOYI: I'm with you.

MR JULY: Do you get what I'm saying?

MR BALOYI: Yes. 25

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[Handwritten initials]

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SIBONGILE MZINYATHI

MR JULY: So if you go to page 21 of ...

MR TOM: Page 21 of the first report, and page 20 of the second report, paragraph 5.2.

MR JULY: Yes, 5.2. If you read 5.2, the first paragraph of the success report ends with "AND OTHERS", 5 which is written in capitals. Below that it says:

"The report bears reference 14/02/01 and was signed by Col Leonie Verster. Paragraph 'A1' ..." 10

And then it says:

"General Dramat had a meeting ..."

That is out. If you go to the new report it's not there, it has been deleted.

MR MZINYATHI: And you can see everything that has gone out 15 has got his ...

MR JULY: Yes. So if you look at paragraph 5.3:



"EMAILS BY CAPTAIN MALULEKE."

In the other report it has been left out. No, no, it's there. 20

MR BALOYI: "He sent emails ..."

MR JULY: Yes. Then if you read the one of 22 January, the original one, it says:

"The emails were sent to the PA of General Dramat, Phumla ..." 25



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SIBONGILE MZINYATHI

But you won't find it there. It's not there.

MR BALOYI: "He sent emails to Zimbabwean Police trying to find out how they travelled back home."

MR JULY: Yes, but the reference to PHUMLA, the PA, is not there. 5

MR BALOYI: It has been deleted.

MR MZINYATHI: This thing has been sanitised.

MR TOM: And then page 22.

MR JULY: "LETTER TO STAKEHOLDERS DATED 20/08/2012: 10
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. 15
General Sibiya was appointed ..."

But on page 22 of this it is not there.

MR BALOYI: "LETTER TO STAKEHOLDERS" - let me just see. I think the whole paragraph has been omitted.

MR JULY: It's gone. It's not there. 20

MR BALOYI: You see SIBIYA in the second report has been omitted altogether.

MR JULY: Then you look at the documentary evidence on the first one, and how they dealt with it. Now, to avoid details, they then put 25

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GEORGE BALOYI
STRONGILE MZINYATHI

need is knowledge, and to provide conditions for that to happen.

MR BALOYI:

I mean, he's the head of HAWKS. How can it be said he didn't know about it?

MR JULY:

He knew, because there were also SMSs that were not returned by DRAMAT. So if the knowledge was there, and DRAMAT knew, whether DRAMAT was or was not responding to SMSs is neither here nor there. The difficulty arises about his physical presence next to the scene where the crimes of theft and assault happened. That's it. The other ones of kidnapping and defeating the ends of justice - there is no way that he did not know about it.

MR BALOYI:

Yes.

MR JULY:

So there are a number of those cases where the information has been cut.

MR BALOYI:

I think that's where we also brought in conspiracy.

MR JULY:

So that is where we are.

THE INTERVIEW ADJOURNS

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ANNEXURE HIK/W 11.



HIK / WII

Y6-HIK-SUP-397

GD. Baloyi

From: GD. Baloyi <gdbaloyi@npa.gov.za>
Sent: 07 April 2015 01:01 PM
To: GD. Baloyi
Subject: Fw: Re: Request for new investigative guidelines as per our discussion

On 2015/03/10, at 18:15, GD. Baloyi <gdbaloyi@npa.gov.za> wrote:

Dear Mr Khuba

It appears that you misunderstood me. There is not yet a final decision, I was debating various scenarios with you as the i/o and getting to understand the case. Once a decision is reached at the appropriate level, it will be communicated to you through correct channels. I will send you the instruction regarding Vodacom when I am back at the office on Friday, regards, George

On 2015/03/10, at 11:53 AM, iKhuba@ipid.gov.za <iKhuba@ipid.gov.za> wrote:

Good day Adv. Baloyi,

On the 23 February 2015, you called me and advised me that you have been seized with the responsibility to decide and/or prosecute the investigations by the IPID against Lt. General Dramat and Others. In our discussions you indicated that, based on the case docket we have presented to the DDP, there is no way that you will charge and prosecute Generals Dramat and Sibilya.

However, on the 3 March 2015, I consulted with you with our Litigation and Advisory Services Mr. Manka, you stated that you changed your decision and have now decided to prosecute General Dramat, which we accept is your prerogative as a Prosecutor. Further, in the same meeting you indicated that there are further investigations that must be conducted and you will issue a minute with instructions about which investigations you wanted us to conduct.

We just wish to remind you that we are awaiting the said minute in order to enable us to continue and finalize the investigations. Kindly advise when same should be expected.

Mr. Khuba H.I.
Provincial Head
IPID: Limpopo
Tel: 015 291 9800
Cell no: 084 7022 741
Email: ikhuba@ipid.gov.za
Fax no: 015 295 3409

ANNEXURE HIK/W 12.



I HUMBULANI INNOCENT KHUBA with ID number 7205025194083 residing at 96 Hans Van Rensburg with the following contact numbers 0847022741 and 015 2919800 state here under oath in English that.

1

I am a male person employed by the Independent Police Investigative Directorate in Limpopo with the rank of a Chief Director. I am responsible for the Provincial Office and have policing powers conferred to me by the Minister of Police.

2

On 23 February 2015 I received a call from a person who introduced himself as Advocate George Baloyi from Director of Public Prosecution. He indicated that he is dealing with Diepsloot Cas 390/07/2012 and he would want to talk to me about the evidence in the case. We discussed the evidence of case over the phone including evidence against General Sibiyi and General Dramat. He said that he had studied the dockets without the use of the so called new or old report because he wanted to gain proper perspective of the evidence without being influenced by the report. He told me that with the available evidence and the absence of the key witness Col Madilonga, there is no way that he will be able to prosecute General Dramat. He requested me to e-mail him the so called old report on rendition case as he only heard about it in the media.

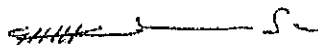
3

On 03 March 2015 I went to Advocate George Baloyi's office accompanied by Mr V Maoka of legal Services. Upon our arrival we greeted him and I discovered that Mr Maoka and Advocate George know each other. We then discussed the evidence in the case including evidence against General Sibiyi and General Dramat. He indicated that he thinks that there is a case against General Dramat and General Sibiyi despite Mr Maoka's opinion on the evidence at hand against the two Generals. We then informed him that IPID can only make recommendation but he has to make final decision on the matter.

4.

On our way out Advocate George Baloyi said that in situation like this, it is very difficult but one had to bite the bullet. He promised to send guidelines for further investigations including interpretation of cellphone records by the service provider. Since then I have not yet received any guidelines from him.

That is all I can declare.



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I know and understand the content of this statement.

I have no objection in taking the prescribed oath.

I consider the prescribed oath binding on my conscience.

I swear that everything I said is the truth, so help me God.

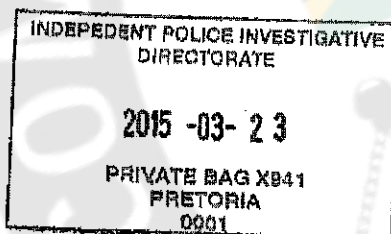
SIGNATURE OF DEPONENT: [Signature]

PRINT SURNAME AND INITIALS: INNOCENT M K HUKA

DATE: 2015/03/22

I certify that the above statement was taken down in my presence and the deponent acknowledges that he/she knows and understands the contents of this statement. This statement was sworn/confirmed before me and the deponent's signature was put in my presence.

DATE: _____ COMMISSIONER OF OATH: [Signature]
 TIME: _____ NAME AND SURNAME: MADON P. UH
 PLACE: _____ RANK: DIRECTOR: LITIGATION SERVICES
 IPID _____



HI [Signature]

ANNEXURE HIK/W 13.



SWORN AFFIDAVIT

I, the undersigned

PULE VICEROY HILLARY MAOKA

do hereby state under oath and say:-

1.

On the 3 March 2015, I accompanied Mr Innocent Khuba, the Provincial Head for the Limpopo Province of the IPID and the Investigator of the Diepsloot CAS 390/07/2012 to the offices of the DPP, Pretoria in order to meet Advocate George Baloyi.

2.

The purpose of the meeting was that, Advocate Baloyi wanted to discuss the Diepsloot case with Mr Khuba as the investigator.

3.

The reason I accompanied Mr Khuba was to understand and share in the discussion because of my prosecutorial background.

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4.

Discussion ensued about our views regarding who must be charged and on what charges. Mr Khuba and I made it clear to Advocate Baloyi that we stand by our recommendations.

5.

He indicated to us that the view of his "Boss" (the DPP), is that Lt. General Dramat must also be charged because, as the head of the unit, there is no way that Dramat could not have known about the conduct of Maluleke and others. We were surprised by the sudden turn of events, because on the 23 February 2015, Advocate Baloyi informed Mr Khuba that based on the evidence he was not going to prosecute Sibiya and Dramat.

6.

I told Advocate Baloyi that although it is his prerogative to decide, the decision to charge Sibiya and Dramat, was based on speculation and suspicion.

7.

I canvassed with him the fact that Madilonga (the deceased witness) statement is inadmissible because it is not a dying declaration. Further, that reliance on the phone records proves nothing other than that there was communication between the Beitebridge border post telephone numbers with the cell phone number belonging to Dramat.

8.

Handwritten signatures and initials at the bottom right of the page, including a large circular signature and the initials "H1".

Regarding the SMS' report, I brought to the attention of Adv. Baloyi that, it is my view that there is no evidence that Dramat is or was aware about the contents of the success reports, however, in the case of Lebea, there is stronger evidence to the effect that he was aware about the contents of the success report due to the fact that Lebea had acknowledged one report. As a result, should a decision be made to charge Dramat, based on the success report, it follows that Lebea must also be charged. In fact, in the case of Lebea there was strong proof that he received same. I also brought to the attention of Adv. Baloyi that this case was similar to the case of Major General Booysen. Further, the fact that Sibiya sent SMS' to both Lebea and Dramat, which was the DPCI's mode of communication does not prove anything or suggests any impropriety.

9.


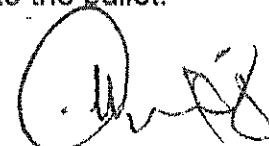
Regarding the meeting held at DPCI Head office in Silverton, there are conflicting statements about whether or not Dramat was present. Further, that whatever Dramat may or may not have said does not in any way suggest that he knew that the operation was conducted illegally or that the illegal operation had his blessings.

10.

Interestingly, Advocate Baloyi made the same observation that it would seem the crime intelligence police falsely implicated Sibiya whilst they knew that the actions of Maluleke were unlawful, referring to a statement by one of the witnesses.

11.

Advocate Baloyi told us that he wanted to consult with his DPP (Adv Mzinyathi) and left us in his office. On his return he told us that they have decided that Dramat must be charged and that we will have to bite the bullet.


111 

12.

I requested Adv. Baloyi to send us a minutewith his instructions indicating which investigations he still wanted to be conducted further. To-date we have received nothing despite an e-mail by Mr. Khuba reminding him of same.

13.

I was surprised to learn from City Press that Advocate Mziyanyathi, stating that there are few things to be followed up. However, to-date still we have received nothing from his office.

DATED AT PRETORIA ON THIS THE 23 MARCH 2015.



DEPONENT

I certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, that he has no objection to the taking of the prescribed oath and that he considers this oath to be binding on his conscience.

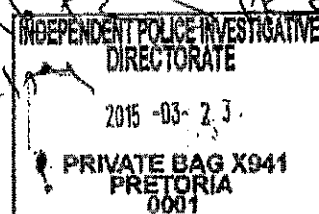
Signed and sworn before me at **PRETORIA** on this the **23 March 2015.**

COMMISSIONER OF OATH:

NAME AND SURNAME:

RANK:

Business Address:



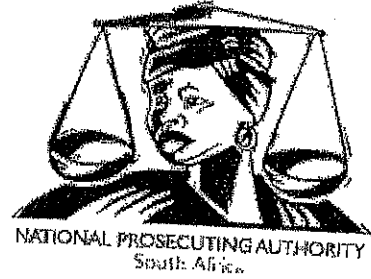
ANNEXURE HIK/W 14.



ANNEXURE "A"

H/K / W/14 Y6-H/K-SUP-407

**Priority Crimes Litigation
Unit**



Reference: 10/1/3/5/3/PCLU1/2016(IPID)
Enquiries: Kim Benjamin
Email: KBenjamin@npa.gov.za

Head Office

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018 381 9003

Fax: +27 12 845 7326

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

2 November 2016

The Section Head
Crimes Against the State and Tactical Operations Management
Directorate of Priority Crimes Investigations
Private Bag X1500
PRETORIA
0001

ATTENTION: BRIGADIER XABA

P/Bag X752

Pretoria

0001

South Africa

www.npa.gov.za

**THE STATE VERSUS HUMBULANI INNOCENT KHUBA AND
TWO (2) OTHERS ALTERATION OF THE REPORT ON THE
ZIMBABWE RENDITION MATTER: PRETORIA-CENTRAL
CAS 2454/5/2015; CAPTAIN HLATSHWAYO**


1. The case was on the Regional court roll on 1 November 2016. All the accused persons were present with their counsels ready to proceed on trial. The State could not commence with the hearing of the matter as a result of the following difficulties/ challenges:-

- Mr Sandile July of Werkmans Attorneys had disclosed his unwillingness to testify in the matter, he was of the view that his evidence amounts to hearsay evidence, a view which we do not agree with. He further threatens to approach the High Court to set aside his subpoena. A copy of his letter to me is enclosed herewith.

- Brigadier Moukangwe who is now at the Provincial Detectives in Nelspruit, was unwilling to honour an appointment for consultation on Friday 28 October 2016; he indicated that the investigating officer did not obtain his witness statement despite having been in Pretoria at the time of the investigation. I had relied on the recording of his consultation at Werkmans Attorneys and was of the view that he had a statement in the main rendition matter, which was not so. He later called to indicate that he is now willing to assist, when the case was withdrawn already. A30
- Mr Angus, the head of IPID in Nelspruit indicated that he could not attend the consultation that I planned with him on Monday 24 October 2016 as he did not get approval of his travel arrangements. Accused 3, Mr McBride had resumed working as Executive Director of IPID and it would make it impossible for him as his subordinate to testify against his supervisor. I travelled to Nelspruit on Tuesday 25 October 2016 where I had a consultation with him. Although he was willing to testify, it would place him at a risk of losing his job to testify against his supervisor. The return of Mr McBride to the office and the immediate reversal of all the reforms brought by Mr Kgamanyane, who had been acting in the place of Mr McBride during the suspension, seem to have placed some renewed pressure that makes it uneasy and reluctant to testify in the trial.
- Adv Zaais van Zyl indicated that he normally does not even consider the recommendation of IPID in his assessment of the case, it would not have made a difference to him whether the recommendation was altered as he would read the statements to determine whether there was a case or not.
- The statement of Kukie Mbeki the former IPID Executive Director who had asked Accused 1, Khuba to handle the rendition investigation, was not obtained in the docket. Accused 1's version in the disciplinary hearing was that Kukie Mbeki had given

him an instruction to work with Brigadier Moukangwe and Adv Mosing to the exclusion of his supervisor, Mr Sesoko, which instruction was in their view unlawful. It was crucial to get a statement of Kukie Mbeki. I did not manage to get even a contact number of her.

2. I also considered that if I were to lead the evidence of Adv Mosing in this matter, it may compromise the main rendition case or the accused will have a chance to test his evidence in this matter before the main case.
3. In the light of these challenges, I thought it wise to have the charges withdrawn instead of putting the charges when I am not confident of a conviction. These changed circumstances forced me to withdraw all the charges against the accused.
4. The case docket is returned herewith.


G S Maema
Deputy Director of Public Prosecutions
Date: 2/11/2016

ANNEXURE HIK/W 15.



HIK/WB

**IN THE LABOUR COURT OF SOUTH AFRICA
HELD IN BRAAMFONTEIN**

CASE NO: JR1057/2016

In the matter between:

INNOCENT HUMBULANI KHUBA

Applicant

and

GENERAL PUBLIC SERVICE SECTORAL1st Respondent**BARGAINING COUNCIL****DEPARTMENT: INDEPENDENT POLICE**2nd Respondent**INVESTIGATIVE DIRECTORATE****NELSON MATSOBANE LEDWABA N.O**3rd Respondent

SETTLEMENT AGREEMENT

INTRODUCTION

- 1 The Applicant and the Second Respondent (herein also referred to as "parties"), record the settlement of their dispute relating to the unfair dismissal of the Applicant by the then acting Executive Director of the Second Respondent on the 30 September 2015, in the following terms: By signing this agreement, the parties acknowledge that the agreement is more particularly the contents are understandable to them.
- 2 This agreement is in full and final settlement of the dispute under the above case number as well as in full settlement of all statutory payments due to the applicant unless specifically excluded hereunder.

BACKGROUND

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- 3 Mr. Khuba was employed by the IPID since January 1999 as an Assistant Director: Investigations. He grew within the ranks of the institution until he was appointed the Chief Director and Provincial Head for the Limpopo Province in September 2014.
- 4 On the 22 May 2015, the then acting Executive Director Mr. K I Kgamanyane ("Kgamanyane"), placed Mr I H Khuba ("Khuba"), on precautionary suspension under the provisions of paragraphs 2.7.2 of the SMS Handbook.
- 5 On the 7 July 2015, Khuba was served with a notice to attend a disciplinary hearing on the 17 July 2015. The disciplinary hearing was finally heard and finalised on the 23 September 2015, after the IPID with the blessings and approval of Kgamanyane entered into a settlement agreement with Khuba.
- 6 Briefly, the settlement agreement provided that Khuba will plead guilty to the charges proffered against him as reflected in the charge sheet and the chairperson will impose a sanction of final written warning which would have been valid for a period of six months. Of importance, is that paragraph 10 of the settlement agreement provided as follows:
- "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."**
- 7 It is noteworthy to mention that this agreement was never varied, added to or cancelled as result the settlement agreement remained binding to all parties to the agreement entered into between Khuba and the IPID. See **Annexure "B"**.
- 8 The settlement agreement and the sanction imposed by the Chairperson concluded the disciplinary enquiry relating to the charges proffered by the employer against Khuba on the 23 September 2015 in accordance with the collective agreement and the DPSA Ministerial Directives regulating misconduct enquiries against SMS members.

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- 9 On the 25 September 2015, Khuba deposed to an affidavit the gist thereof was to the effect that neither Mr. Sesoko or Mr. McBride instructed him to make any specific changes or to exonerate any person in the rendition report made in March 2014.
- 10 On the 28 September 2015, and consistent with the settlement agreement, Khuba reported for duty and resumed his duties as the Chief Director and Provincial Head for the Limpopo Province.
- 11 However, on the 29 September 2015, following Khuba deposing to an affidavit that neither Mr. Mathews Sesoko or Mr. R J McBride instructed him to make any specific changes in the report or exonerate any person in the report, Kgamanyane addressed a letter to Khuba inviting the latter to make written representations by not later than 09h00 the following day the 30 September 2015, why the final written notice sanction imposed by the Chairperson of Khuba's disciplinary hearing imposed on the 23 September 2015 as a result of the settlement agreement entered into between Khuba and the IPID should not be revoked and a summary dismissal imposed.
- 12 On the 30 September 2015, Khuba submitted written representations against his unlawful summarily dismissal. Despite Khuba's representations, Kgamanyane summarily dismissed Khuba with immediate effect on the 30 September 2015. This dismissal was also against the spirit Khuba's letter of appointment which provided that Khuba's employment will be terminated after being found guilty of misconduct that would have justified his dismissal. See Annexure "C".
- 13 It follows that Khuba was found guilty by the Chairperson on the 23 September 2015 after pleading guilty as per the settlement agreement that was entered into between the parties and a sanction of final written warning imposed. Therefore, and in accordance with the collective agreement as well as the DPSA Ministerial Directives, Khuba's disciplinary hearing was finalised.

1



PROCEDURAL UNFAIRNESS

- 14 In terms of the provisions clause 6 of the collective agreement, that is, Resolution 1 of 2003 read with the provisions paragraph of the SMS Handbook the employer had a discretion to initiate disciplinary in the event it is alleged that misconduct justifies a more serious form of disciplinary action than provided in paragraph 5. Both the collective agreement and the SMS Handbook provide that the employer must appoint an employee as representative, who as far as possible should be the manager of the employee, to initiate the enquiry.
- 15 Further, clause 7.3 of the collective agreement provides for the procedure provide for the procedure to be followed when a disciplinary enquiry is initiated. Further, it provides for the procedure to be followed after the employee has found guilty of the misconduct proffered.
- 16 Further, clause 7.4 provide for the procedure that should be followed by the chair when pronouncing upon an appropriate sanction to be imposed after the employee has been found he/she has committed misconduct.
- 17 In terms of paragraph 4(d) of the DPSA Ministerial Directives issued as a result of the collective agreement the appeal procedure for SMS members has been removed resulting in the sanction becoming effective immediately "– In other words the implementation of a sanction can no longer be stayed".
- 18 It is also important to mention that the both the collective agreement and the SMS Handbook as well as the Ministerial Handbook do not provide for summary dismissal of employees..
- 19 As a result, the parties (applicant and second respondent) agree that procedure as set out in paragraphs 14 – 17 above, was not followed by the then acting Executive Director, thereby, making the dismissal of Khuba procedurally unfair.

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SUBSTANTIVE UNFAIRNESS

- 20 The parties (applicant and second respondent), agree that according to the settlement agreement entered into between the parties on the 23 September 2015, it was binding on the second respondent and could only be set aside in accordance with the procedure set out therein.
- 21 Further, that applicant by deposing to the affidavit on the 25 September 2015 did not make himself guilty of misconduct and that the plea of guilty entered by Khuba on the 23 September 2015 relates to his role in as far as the two reports are concerned.
- 22 Further, that Khuba pleaded guilty to the altering of the first report because he had added new evidence to the case docket that required him to review his January 2014 report. Further, that when he compiled the March 2014 report that was done in accordance with regulation 5(3)(i) of the IPID regulations issued on the 10 February 2012 as per Government Notice No. 35018, thereby, his actions being lawful.
- 23 That conduct of the then acting Executive Director Kgamanyane in summarily dismissing Khuba, is contrary to the plea of guilty agreement concluded between the parties. In his submission, Khuba and correctly so, contented that his signing of an affidavit did not contravene any of the terms and conditions of the guilty plea agreement. Despite such a valid and lawful contention, the summary dismissal occurred. Such is a demonstration of *mala fides* on the part of Kgamanyane. It is trite law that state officials should not use State resources to unlawfully settle scores or perpetuate illegal and unlawful conduct or actions. The utilisation of State resources to perpetuate such conduct is in contravention of the Public Finance Management Act, Act 1 of 1999 ("the PFMA"). The situation becomes grave when such unbecoming conduct and unlawful conduct is perpetuated by an

Accounting Officer such as Kgamanyane who is expected to be the custodian of the PFMA and should lead by example.

- 24 The conduct of Kgamanyane referred to above, occurred in violation of the constitutional rights of Khuba.

ARBITRATION AWARD

- 25 The parties agree that the approach to be adopted in determining whether an unfair labour practice occurred, as contemplated in the LRA, is set out in the cases set out below.

- 26 In the matter of **Joseph Dube & 76 Others v Nasionale Sweisware (Pty) Ltd 1998 (3) SA 956 (SCA)** at (2) and (4), the Supreme Court of Appeal held that: -

“(2) When applying the definition of an “unfair labour practice” in the Act, the LAC and this Court are expressly enjoined to have regard not only to law but also to fairness. Consequently, the enquiry involves a moral or value judgment on a combination of findings of fact and opinion (Media Workers) ...

(4) In order that a balanced and equitable assessment may be made fairness requires the matter to be viewed both from the point of view of the employer and from the point of view of the employee (Vetsak (supra) at p. 589 C – D.”

- 27 In the matter of **Media Workers Association of SA v Press Corporation of SA Ltd 1992 (4) SA 791 (AD)** at 798 (H) to 799 (a) the Court held:

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"The position then is that the definition of an unfair labour practice entails a determination of the effects or possible effects of certain practices, and of the fairness of such effects. And, when applying the definition, the Labour Appeal Court is again expressly enjoined to have regard not only to law but also to fairness. In my view a decision of the Court pursuant to these provisions is not a decision on a question of law in the strict sense of the term. It is the passing of a moral judgment on a combination of findings of fact and opinions. It follows that the chairman's prerogative of deciding questions of law (section 17A(3)(e)(ii)) need not stand in the way of the conclusion suggested by the other provisions of the Act considered above, namely that the Act contemplates that assessors should participate in answering the ultimate question. These various sections can exist in harmony if the expression "question of law" in section 17A(3)(e)(ii) is interpreted strictly so as not to include questions such as the ultimate question."

- 28 In the matter of **NUM v Free State Consolidated Gold Mines Ltd 1996 (1) SA 422 (AD)** at 446 H the Court held:

"Ultimately the task of the court is to pass a moral or value judgment."

- 29 In the matter of **National Union of Metalworkers of South Africa v Vetsak Co-Operative Ltd 1996 (4) SA 577 (AD)** at 589 C - D the Court held:

"Fairness comprehends that regard must be had not only to the position and interests of the worker, but also those of the employer, in order to make a balanced and equitable assessment. In judging fairness a court applies a moral or value judgment to established facts and circumstances (**NUM v Free State Cons at 446 I**). And in doing so it must have due and proper regard to the objectives sought to be achieved by the Act. In my view it would

be unwise and undesirable to lay down, or to attempt to lay down, any universally applicable test for deciding what is fair."

- 30 In the matter of **Sidumo and another v Rustenburg Platinum Mines (2007) 28 ILJ 2405 (CC)** and others the Court held:

"[267] It is plain from these constitutional and statutory provisions that CCMA arbitration proceedings should be conducted in a fair manner. The parties to a CCMA arbitration must be afforded a fair trial. Parties to the CCMA arbitrations have a right to have their cases fully and fairly determined. Fairness in the conduct of the proceedings requires a commissioner to apply his or her mind to the issues that are material to the determination of the dispute. One of the duties of a commissioner in conducting an arbitration is to determine the material facts and then to apply the provisions of the LRA to those facts in answering the question whether the dismissal was for a fair reason. In my judgment where a commissioner fails to apply his or her mind to a matter which is material to the determination of the fairness of the sanction, it can hardly be said that there was a fair trial of issues."

- 31 The issue that requires consideration is whether the award meets the reasonable test as stipulated in the cases of **Sidumo (supra)**, **Gold Fields Mining SA (Pty) Ltd (Kloof Gold Mine v Commission for Conciliation, Mediation & Arbitration & others** and **Herholdt (supra)**.
- 32 In determining the dispute, the Commissioner had to take into account the facts set out in Annexure "E", being the letter dated 30th of September 2015, which clearly, without any shadow of a doubt, demonstrates that Khuba was summarily dismissed without a disciplinary hearing.

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33 It is the parties considered views, as it shall be demonstrated below, that the award made by the Commissioner does not meet the test referred to above, as it is not sound, rational and reasonable. Further, the Commissioner did not take into account the documentary evidence placed before him and did not comprehend the issues that he was called upon to determine.

34 In the matter of **Southern Sun Hotel Interests (Pty) Ltd v Commissioner for Conciliation, Mediation and Arbitration and Others (2010) 31 ILJ 452 (LC)** at [17] Van Niekerk J held as follows:

"If a Commissioner fails to take material evidence into account, or has regard to evidence that is irrelevant, or the Commissioner commits some other misconduct or gross irregularity during the proceedings under review and a party is likely to be prejudiced as a consequence, the commissioner's decision is liable to be set aside regardless of the result of the proceedings or whether on the basis of the record of the proceedings, the result is nonetheless capable of justification."

35 In the matter of **Herholdt v Nedbank Ltd (COSATU as Amicus Curiae) 2013 (6) SA 224 (SCA)** at 232 [18] the Court held:

"A latent irregularity, sometimes referred to as process-related unreasonableness, is one arising from the failure by the arbitrator to take into account a material fact in determining the arbitration. It includes the converse situation of taking into account a materially irrelevant fact. If that occurs, it is said to be a latent irregularity justifying the setting-aside of the award. The LAC expressed it thus:

"Where a commissioner fails to have regard to material facts, this will constitute a gross irregularity in the conduct of the arbitration proceedings because the commissioner would have unreasonably failed to perform his or her mandate and

thereby have prevented the aggrieved party from having its case fully and fairly determined."

36 The parties to this settlement agreement have carefully perused and analysed the arbitration award. In analysing the documentary evidence placed before him, the Commissioner did not mention at all the contents of annexure "E" and the legal effect of the guilty plea agreement that was concluded, referred to as annexure "B" in the pre-arbitration minutes. Such is an indication that the Commissioner did not apply his mind to the burning issues that he had to determine.

37 In the award at paragraph 14, the Commissioner, and correctly so, cites a quotation from the Sidumo case, which reads as follows:

"In approaching the dismissal dispute impartially a commissioner will take into account the totality of circumstances. He or she will necessarily take into account the importance of the rule that had been breached. The commissioner must of course consider the reason the employer imposed the sanction of dismissal, as he or she must take into account the basis of the employee's challenge to the dismissal. There are other factors that will require consideration. For example, the harm caused by the employee's conduct, whether additional training and instruction may result in the employee not repeating the misconduct, the effect of dismissal on the employee and his or her long-service record. This is not an exhaustive list." (our emphasis)

38 Further, in the award, and correctly so, the Commissioner, at paragraph 15, states:

"15. The principle established in this case emphasised the fact that a Commissioner should not defer or rubber stamp the decision of the employer and that he/she must consider all the relevant circumstances of the case. Commissioners are

further enjoined to consider personal circumstances of the employees in determining the fairness of the dismissal."

39 A perusal and analysis of the award clearly demonstrates that the Commissioner did not apply the principle referred to in the above two paragraphs but merely paid lip service thereto, and rubberstamped the decision of Kgamanyane.

40 The finding that "the sanction of dismissal hearing was appropriate" is unreasonable *in casu*, as already demonstrated above.

41 In the award the following appears:

"20. Turning to the procedural aspect of the matter, the applicant alleged that he was denied an opportunity to state his case. The applicant argued that the respondent has violated Clause 6 and 7 of Resolution 1 of 2003, which provides, inter alia: "that the employer in cases of serious misconduct which would warrant a dismissal may institute a disciplinary enquiry". The authority used as reference herein is not peremptory and as such give the respondent a leeway to dispense with the formalistic processes of disciplinary hearing."

42 The finding referred to above is not legally sound, taking into account the objective facts of this matter, and is also dispelled by what is trite law, namely that parties are bound by the process agreed upon, as set out in a disciplinary code.

43 In the matter of **Gosisephuthabatho Gustuv Lekabe v The Minister Department of Justice & Another, Case No. J1092/2008**, the Court held that: -

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"[13] In Highveld District Council, the Labour Appeal Court held that:

"Where the parties to a collective agreement or an employment contract agree to a procedure to be followed in disciplinary proceedings, the fact of their agreement will go a long way towards proving that the procedure is fair as contemplated in Section 188 (1)(b) of the Act. The mere fact that a procedure is an agreed one does not however make it fair. By the same token, the fact that an agreed procedure is not followed does not in itself mean that the procedure actually followed was unfair.....When deciding whether a particular procedure was fair, the tribunal judging the fairness must scrutinize the procedure actually followed. It must decide whether in all the circumstances the procedure was fair."

[14] The above approach is similar to that adopted in the case of Leonard Dingler (PTY) Ltd v Ngwenya (1999) 5 BLLR 431 (LAC), where Judge Kroon JA stated:

"In my judgement, and having regard to all circumstances, the time when and the manner in which the apparent hearing was held, while not strictly in accordance with the appellants disciplinary code, were substantially fair, reasonable and equitable."

See also SA Tourism Board v CCMA And Others [2004] 3 BLLR 272 (LC)".

44 In the matter of Francois Wilhelm Riekert v The Commissioner for Conciliation, Mediation, and Arbitration & 2 Others, Case No. JR686/03 , the Labour Court held that: -

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"17. In the Black Mountain case, like in this matter, the employer argued that the status of a disciplinary code is that of a guideline not requiring slavish adherence. With reference to the cases the employer's representative cited in support of this proposition (at page 7 G – H of the Black Mountain judgement), Murphy AJ commented that the matters referred to all dealt with relatively minor departures from procedural aspects of the prevailing disciplinary code such as the failure of the chairperson to appoint a prosecutor on appeal or the appointment of a presiding officer not strictly in accordance with the prescribed guidelines. Murphy AJ went on to say that "..... Where the employer's disciplinary code and policy provide for a particular approach it will generally be considered unfair to follow a different approach without legitimate justification. Justice requires that employers should be held to the standards they have adopted."

45 Reference made in the award to the process, item 4(1) of the Code of Good Practice and to the cases of **Maropane v Gilbey's Distillers & Vinters (Pty) Ltd & another** and **Avril Elizabeth Home for the Mentally Handicapped v CCMA and Others [2006] 2 BLLR 118 (LAC)**, is misplaced. The issue that had to be determined did not relate to the investigation, but to the non-holding of the disciplinary hearing prior to the summary dismissal of Khuba.

46 Similarly, the issue did not relate to the fairness of the opportunity to make representation, as found in the award as set out in paragraph 23, as follows:

"23. The applicant was accorded a fair opportunity to make representations as to why his final written warning shouldn't be revoked and be replaced with a sanction of dismissal. He exercised that opportunity. Whether such opportunity was utilised effectively or not, same does not make his dismissal to be procedurally unfair."

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- 47 The Commissioner did not apply his mind to what IPID sought to establish as its case, as set out in the arbitration award, which reads as follows:

"5.12 By inviting the applicant to make written representations, they believe that the latter was afforded an opportunity to be heard prior to a harsh sanction being imposed. The respondent prayed for the dismissal of the applicant's case."

- 48 The above is a demonstration that it is not the IPID's case that, prior to the summary dismissal of Khuba, the required disciplinary hearing was instituted. **The issue was not what Kgamanyane believed but whether there was compliance with the legislation, SMS Handbook and the directive.**

- 49 The Commissioner finds that the IPID was obliged *"to show that he considered the representations of the applicant in arriving at the decision to dismiss. This has been viewed by various courts as a demonstration that same has considered or that the decision maker has applied his/her mind."* Such a finding is unreasonable and not legally correct in casu.

- 50 The Commissioner, without making any reference, merely finds that:

"I determine that the respondent successfully discharged the requisite onus, in terms of the Act, in order to prove that the misconduct committed by applicant warranted a dismissal."

- 51 It is clear that the aforesaid finding puts the cart before the horse in that the dismissal of Khuba should have been as a result of a guilty finding arising from a disciplinary hearing, and not merely because of the commission of a misconduct. Had the Commissioner applied his mind and comprehended the issues that he had to determine, he would have found that the dismissal of Khuba was both procedurally and substantively unfair.

- 52 Applying the principles set out above, to the objective facts of this matter, it is the parties considered views that second respondent will not make out a case on the merits, to resist the relief sought in the review application launched by the applicant.

SETTLEMENT

- 53 Based on the above, the parties (applicant and second respondent), wishes to settle the dispute as set out above, pending confirmation of the above Honourable Court.
- 54 In the event the Honourable Court agree with all the above, the parties agree at the following order which may be made the order of the Court:

It is hereby ordered:

- (i) The arbitration award issued under case no. GPBC 2606/2015 by Panelist Nelson Matsobane Ledwaba is hereby reviewed and set aside;
- (ii) The arbitration award is replaced by the following order:
 - a. The dismissal of the Applicant Innocent Humbulani Khuba by the second respondent on the 30 September 2015, was procedurally and substantively unfair;
 - b. The Second Respondent is ordered to reinstate the applicant in his position of Chief Director and Provincial Head for the Limpopo Province from the 30 September 2015;

- c. Such reinstatement should include payment of Applicant full emoluments as at the 30 September 2015;
- d. Payments of the arrear salary will be paid to the Applicant in April 2017;
- e. Other arrear benefits such as pension and leave gratuity of the Applicant should be adjusted accordingly with immediate effect;
- f. Applicant to resume his duties as Chief Director and Provincial Head for the Limpopo Province with immediate effect.

COSTS

Each party shall be liable for own legal costs incurred in the review application.

DONE AND SIGNED AT PRETORIA AT THIS 31 DAY OF JANUARY 2017

FOR SECOND RESPONDENT

WITNESS

9/1/17 M. S.

FOR THE APPLICANT

M. E.

WITNESS

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